

UNIVERSAL ROBINA CORPORATION, PETITIONER, VS. DEPARTMENT OF TRADE AND INDUSTRY (“DTI”), THE DTI SECRETARY, ZENAIDA C. MAGLAYA, IN HER CAPACITY AS DTI UNDERSECRETARY, AND VICTORI...

G.R. No. 203353. February 14, 2023

Ponente: LEONEN, SAJ.

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LEONEN, SAJ.:

A petition for declaratory relief is a viable remedy for questioning the constitutionality of a statute. However, just because a legal remedy is a viable procedural vehicle to assail the constitutionality of a law does not mean courts are constrained to delve into this issue when the remedy is filed. In accordance with this Court's policy of deference, the requirements of justiciability must first be met, regardless of the remedy invoked.

This Court resolves a Petition for Review on Certiorari[1] assailing the Decision[2] of the Regional Trial Court, which denied the Petition for Declaratory Relief filed by Universal Robina Corporation (Universal Robina) for failing to show the invalidity of the laws and executive issuances it assails, and for being premature.

On May 25, 2010, Atty. Victorio Mario A. Dimagiba (Director Dimagiba), the then director of the Bureau of Trade Regulation and Consumer Protection, wrote Universal Robina to ask why its ex-mill flour prices had not been reduced despite the decrease in certain cost factors, such as the price of wheat in the international market, freight cost, foreign exchange rate, and the imposition of zero tariff.[3]

Director Dimagiba wrote similar letters to other local flour millers, including Delta Milling Industries, Inc., Morning Star Milling Corporation, Philippine Foremost Milling Corporation, San Miguel Mills, Inc., General Milling Corporation, Liberty Flour Mills, Inc., Philmico Foods Corporation, Philippine Flour Mills, Republic Flour Milling Corporation, and Wellington Flour Mills, inquiring about their flour prices.[4]

Universal Robina responded that "the difference in the price of our flour bag within a span of three (3) years (comparing the period of Jan-May 2007 and Jan-May 2010) reflects the price movement of wheat in the world market and covers our other costs of operation, which involve increases in our labor costs." [5] Director Dimagiba replied, reminding Universal Robina that the wheat prices in the international market from January 2007 to September 2007 on one hand, and from January 2010 to May 2010 on the other, were almost the same despite the retail and ex-mill prices in 2007 being lower than the prices in 2010. He noted that the wheat price in the international market constituted 75% of flour production, while the operating cost and power constituted about 5% of the production cost.[6] He thus instructed Universal Robina to reduce its ex-mill prices to P630.00 to P680.00 per bag of flour.[7]

Later, before the Department of Trade and Industry, Director Dimagiba filed Complaints against Universal Robina and the other local flour millers for profiteering.[8] The Complaint-Affidavit against Universal Robina narrated Director Dimagiba's exchange of letters with it and stated the basis for instructing it to reduce its ex-mill

prices. It alleged that Universal Robina's flour price at P790.00 per bag constituted profiteering under Republic Act No. 7581, or the Price Act, for not representing the true worth of the flour per bag. It prayed that Universal Robina be fined and ordered to sell from P630.00 to P680.00 per bag.[9]

On June 15, 2010, before the hearing on the profiteering charge, Universal Robina received a copy of a Preliminary Order[10] issued by the Department of Trade and Industry adjudication officer to reduce the selling price of flour from the P770.00 to P790.00 range down to the P630.00 to P680.00 range while the case was pending. Universal Robina was also required to explain why the Preliminary Order should be revoked.[11]

The Preliminary Order was soon lifted after the Philippine Association of Flour Millers had declared to the Department of Trade and Industry that it had lowered its flour prices, and had made a press statement advising that "the flour milling industry believes it is in the consuming public's interest that the [Department of Trade and Industry's] instruction be followed." [12]

The Complaint against the local flour millers was later dismissed for lack of a certification against forum shopping.[13]

Meanwhile, the Department of Trade and Industry wrote Universal Robina, noticing that the company's ex-mill prices were higher than expected, and inviting Universal Robina to meet regarding its prices:

It is observed that ex-mill prices of flour are increasing despite the peso appreciating trend. Your first increase of P25 on Grade 1 hard flour happened during the 2[nd] week of August 2010 and another increase of P50 in the 3[rd] week of September 2010.

Using your actual importation data (copy attached), which we got from the Bureau of Import Services and the 3-month flour cycle (importation to production), BTRCP's computation for the ex-mill price of your Grade 1 hard flour is P876.34 for August 2010, P657.83 for September 2010 and P536.49 for October 2010 as against your declared ex-mill price ranging from P725.00 – P750.00 for August and September 2010 and P775.00 – P800.00 for October 2010.

Further, on a year to year basis the peso had appreciated by an average of 11% versus the US dollar.

In this connection, please submit to us within five (5) days upon receipt of this letter, your comment/son the price evaluation of BTRCP.

We are ready to sit down with you to discuss the matter on an agreed date and time.[14]

In response, Universal Robina filed a Petition for Declaratory Relief[15] before the Regional Trial Court. It prayed that the following be declared invalid: (1) the provision in the Price Act prohibiting profiteering, as the Price Act failed to clearly define what it was; (2) Executive Order No. 913 and Rule IX, Section 5 of DTI Administrative Order No. 07[16] for being an invalid exercise of quasi-legislative power and violating due process; and (3) all issuances, acts, or proceedings based on these issuances.[17]

After an exchange of pleadings and the submission of Memoranda,[18] the Regional Trial Court issued a Decision[19] on April 3, 2012 dismissing the Petition. It found that no justiciable controversy existed, and that the Petition was prematurely filed:

After a careful and judicious consideration of the arguments of the parties and the evidence presented the court finds no justiciable controversy that would justify the grant of the petition.

Anent the other issues raised as to whether profiteering as defined under the price act is unconstitutional and whether Section 5 of Department [O]rder No. 7, as well as Executive Order No. 913 are invalid, is not for this court to adjudicate. Every law enjoys in its favor the presumption of constitutionality. The arguments or

evidence presented by the petitioner failed to justify the invalidity of the same. Furthermore, it appears that present petition [has] been prematurely filed, there being no present or actual case or controversy between the parties herein.

....

Petitioner's anticipation that the [sic] a flood gate [sic] of lawsuits against it in case of failure to abide, not only from DTI, but also from various sectors of the public which may even lead to a cessation of business operation that will affect hundred[s] of employees and the irreparable damage to [its] good will is unfounded or a mere speculation.

Again, in the words of Mr. Justice Leonardo A. Quisumbing in the 1999 Garcia case, "[a] calculus of fear and pessimism xxx does not justify the remedy petitioner seeks: that we overturn a law enacted by Congress and approved by the Chief Executive."

WHEREFORE, premises considered, the petition is hereby denied.[20]

Universal Robina moved for reconsideration, but its Motion was denied by the Regional Trial Court in an August 28, 2012 Order.[21]

Thus, Universal Robina filed its Petition for Review on Certiorari[22] before this Court. Public respondent Department of Trade and Industry and its impleaded officials filed their Comment[23] through the Office of the Solicitor General. To this, petitioner filed a Reply.[24] Later, upon being required by this Court,[25] the parties filed their respective Memoranda.[26]

Petitioner argues that there is an actual legal controversy that calls for judicial review.[27] It maintains that the dismissal of the profiteering case against the local flour millers does not negate the existence of a conflict of legal right.[28] As the profiteering case was dismissed due to a technicality, petitioner says that the legal controversy created by public respondents' acts was not resolved by any competent authority, and therefore, remains an actual legal controversy.[29]

Even if the case did become moot, petitioner argues that this Court should nonetheless resolve the case since: (1) there is grave violation of the Constitution; (2) paramount public interest is involved; (3) the constitutional issue raised requires formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the matter is capable of repetition yet evading review, as the profiteering case was dismissed without prejudice to its refiling.[30]

Petitioner insists that it had the right to challenge the constitutionality of Section 5(2) of the Price Act, as it was applied when the Department of Trade and Industry initiated the Complaint against it. Thus, petitioner submits that this Court can, based on the Complaint, decide whether the act of "profiteering" is so vague that petitioner could not reasonably understand the acts it allegedly engaged in to be subject of the charge.[31] Even assuming that the provision cannot be questioned as applied, petitioner insists that the provision may also be facially challenged, as penal statutes may be nullified on a facial challenge based on vagueness.[32]

On the substance, petitioner claims that the definition of profiteering under the Price Act, "the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth[.]" is void for vagueness.[33] Petitioner insists that no standards and guidelines were provided to determine a commodity's "true worth," or a price grossly in excess of it.[34] Thus, it submits that a person selling basic necessities or prime commodities may be threatened with penalty under this provision, without them realizing that they are profiteering.[35] Petitioner notes that penalizing profiteering without sufficiently defining what constitutes it violates one's right to due process and the accused's right to be informed of the nature and cause of an accusation

against them.[36]

Petitioner also argues that Executive Order No. 913 and Rule IX, Section 5 of DTI Administrative Order No. 07, which contain rules on the Department of Trade and Industry's issuance of preliminary orders, are invalid exercises of quasi-legislative power.[37] Pertinently, Section 10 of Executive Order No. 913 provides:

SECTION 10. Preliminary orders. — As soon as a formal charge is instituted by the Minister, and even prior to the commencement of the formal investigation, the Minister may, *motu proprio* or upon verified application of any person, issue a preliminary order requiring a person to refrain from a particular act or to perform a particular act, if the Minister is satisfied that the commission or continuance of the act complained of during the formal investigation of the non-performance thereof would probably work injustice to the complainant; or that the respondent is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the complainant's rights respecting the subject of the formal investigation and tending to render the judgment ineffectual. The Minister shall provide by rules and regulations the other qualifications, restrictions, and procedure for the issuance of such preliminary orders.

Rule IX, Section 5 of DTI Administrative Order No. 07 provides:

Section 5. Preliminary Order. – (a) At any time after the commencement of the action and before judgment, the Adjudication Officer may *motu proprio* or upon verified application by the complainant, or by the officer who signed the formal charge, issue a preliminary order requiring any person to refrain from a particular act or to perform a particular act, if the Adjudication Officer is satisfied that the commission or the continuance of the act complained of during the pendency of the action or the non-performance thereof would probably work injustice to the complainant or the general public; or that the respondent is doing, threatens or is about to do, or is procuring or suffering to be done, some act probably in violation of the complainant's or the general public's rights respecting the subject of the administrative action, and tending to render the judgment ineffectual.

(b) The Adjudication Officer may require the complainant to file with the office of the Adjudication Officer, a bond executed to the respondent, in an amount to be fixed by the Adjudication Officer, to the effect that the complainant will pay to such party all damages which he may sustain by reason of the preliminary order if the Adjudication Officer should finally decide that the complainant was not entitled thereto: Provided, That no bond shall be required in cases initiated by formal charge.

(c) The preliminary order may be granted with or without prior notice and hearing on the application for issuance of preliminary order, at the sound discretion of the Adjudication Officer.

(d) The preliminary order may be dissolved fully or partially at any time by the Adjudication Officer *motu proprio*, or upon application by the respondent with or without prior notice and hearing on the application for dissolution thereof, at the sound discretion of the Adjudication Officer. The grounds for objecting to, or for a motion for dissolution, of any injunctive relief under Section 6, Rule 58 of the Rules of Court shall be applicable.

Petitioner argues that, to be valid, an administrative issuance must be: (1) "authorized by the [L]egislature"; (2) "promulgated in accordance with the prescribed procedure"; (3) "within the scope of the authority given by the [L]egislature"; and (4) reasonable.[38] Petitioner points out that the Consumer Act and the Price Act do not grant the Department of Trade and Industry the power to issue injunctive relief *motu proprio*, without notice and hearing, and without limit as to the duration of effectivity.[39] Thus, it argues that both Executive Order No. 913 and DTI Administrative Order No. 07, which may have sought to implement various trade and industry laws, were unilateral acts by the Executive[40] that exceeded the authority granted by the Legislature.[41]

Petitioner further argues that the promulgation of DTI Administrative Order No. 07 is unreasonable.[42] The power granted is *motu proprio* injunctive relief, without notice and hearing, for a duration left to the discretion of

the adjudication officer.[43] Petitioner insists that this is beyond what is reasonably necessary to prevent the acts intended.[44]

Since Executive Order No. 913 and DTI Administrative Order No. 7 do not emanate from law, and no adequate guidelines or limitations determine the boundaries of the Department of Trade and Industry's power under these rules, petitioner claims that the issuances fail the completeness test and sufficient standard test.[45]

Finally, assuming that Executive Order No. 913 was a legislative act that lent basis to Rule IX, Section 5 of DTI Administrative Order No. 07, petitioner claims that DTI Administrative Order No. 07 cannot apply to the implementation and enforcement of the Price Act. The Price Act, issued later than Executive Order No. 913, provides for injunctive relief in the form of a temporary restraining order for no more than 10 days, a provision that petitioner claims impliedly amended Section 10 of Executive Order No. 913.[46] Accordingly, Rule IX, Section 5 of DTI Administrative Order No. 07 is an invalid exercise of quasi-legislative power as it failed to follow the standard set by the Price Act.

On the other hand, public respondents argue that the Petition was premature since petitioner was not facing any administrative or criminal cases filed before the Department of Trade and Industry.[47] They say that petitioner was not suffering any injury under the Price Act, given that it was actually distributing flour based on its own computed flour prices.[48] They refute petitioner's claim that the case was an exception to the mootness rule.[49]

Public respondents also assert that Section 5(2) of the Price Act is presumed valid, stressing that every reasonable doubt should be resolved in favor of its constitutionality.[50] They claim that the Price Act is an exercise of police power promoting the general welfare, as it ensures the availability of a prime commodity at reasonable prices.[51]

Public respondents assert that a facial challenge against Section 5(2) is impermissible, as the overbreadth and vagueness doctrines only apply to free speech cases, and not to cases involving penal statutes.[52] Neither can it be assailed as applied, they say, as there is no actual profiteering charge against petitioner. They stress that judicial power does not contemplate speculative counseling on a statute's future effect on hypothetical scenarios.[53]

Finally, public respondents belie petitioner's claim that Section 5(2) is vague for providing no standard of what the phrase "grossly in excess of its true worth" means. To them, the words can be understood in their ordinary meaning.[54] They explain that the standard is whether the price set is so much higher than its "correct value" such that the profit or income that manufacturers, suppliers, and investors will earn is exorbitantly greater than what is reasonable.[55]

The issues for this Court to resolve are:

First, whether the Petition for Declaratory Relief is the proper remedy for challenging Section 5(2) of the Price Act; and

Second, whether the provision penalizing profiteering under the Price Act is void for vagueness.

We deny the Petition.

I

Under Rule 63, Section 1 of the Rules of Court, a person whose rights are affected by a statute may, before breach:

. . . 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.

A petition for declaratory relief is a viable remedy to challenge the constitutionality of a law, provided that it meets the requisites of justiciability. That it is a viable remedy does not guarantee that relief can, or will, be granted.

I (A)

When the constitutionality of a statute is raised through a petition for declaratory relief, the standard rules of justiciability apply. Further,

The general rule with respect to justiciability is one of constitutional avoidance. . . .

. . . .

The doctrine of avoidance is palpable when we refuse to decide on the constitutional issue by ruling that the parties have not exhausted administrative remedies, or that they have violated the doctrine of respect for the hierarchy of courts. These are specific variants or corollaries of the rule that the case should be ripe for constitutional adjudication.[56] (Emphasis supplied, citations omitted)

Thus, before delving into the constitutionality of a law, a court must satisfy itself that the following requisites are met:

(1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[57]

Jurisdiction over petitions for declaratory relief lie with the regional trial courts. However, such jurisdiction does not require that the court resolve the issue of the constitutionality of a statute. Courts have mechanisms of avoidance. The requisites of justiciability are themselves anchored on the well-established policy of deference, in recognition of the Judiciary's role as distinct from the political roles of the Legislative and the Executive.[58]

I (B)

An actual case or controversy exists when there are actual facts to enable courts to intelligently adjudicate the issues.[59]

There is also an actual case and controversy when there is a clear and convincing showing of a contrariety of legal rights.[60] In *Belgica v. Ochoa*,[61] this Court explained:

Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." In other words, "[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." [62] (Citations omitted)

In *Calleja v. Executive Secretary*,[63] this Court explained that a contrariety of legal rights is one:

. . . that can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of *prima facie* grave abuse of discretion in the assailed governmental act in the context of actual, not

merely theoretical, facts.[64] (Citations omitted)

In Belgica, this Court also explained that the actual-case requirement is closely related to the ripeness requirement:

Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action." "Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions." [65] (Citations omitted)

Thus, in Belgica, where the parties asserted opposing legal claims regarding the constitutionality of the pork barrel system, this Court deemed itself satisfied that a contrariety of legal rights existed.

This was reiterated in Roy III v. Herbosa:[66]

Regarding the first requisite, the Court in Belgica v. Ochoa stressed anew that an actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute since the courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions. Related to the requirement of an actual case or controversy is the requirement of "ripeness," and a question is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.[67] (Citation omitted)

Thus, for the exercise of judicial review, actual facts resulting from the assailed law, as applied, may not be absolutely necessary in all cases. A clear and convincing showing of a contrariety of legal rights may suffice.

I (C)

As an exception to the requirement of actual facts, there are three instances when a facial review of a law is permissible:

First, in cases involving freedom of expression and its cognates,[68] a facial challenge of a law may be allowed. This contemplates cases where a law: (1) exerts prior restraint on free speech;[69] and (2) is overbroad, creating a chilling effect on free speech.[70] Thus, where no chilling effect is alleged, courts should exercise judicial restraint.

Thus, in Calleja, despite the absence of actual facts, a facial review of the law was permitted because the petitioners sufficiently raised "concerns regarding the freedom of speech, expression, and its cognate rights." [71] This Court held:

As such, the petitions present a permissible facial challenge on the ATA in the context of the freedom of speech and its cognate rights — and it is only on these bases that the Court will rule upon the constitutionality of the law. . . . In fact, the Court is mindful that several of the petitioners have already come under the operation of the ATA as they have been designated as terrorists.[72]

Second, judicial review is also proper, despite no actual facts, when a violation of fundamental rights is involved—one so egregious or so imminent that judicial restraint would mean that such fundamental rights would be violated. In Parcon-Song v. Parcon,[73] this Court explained:

The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.[74]

"Egregiousness" pertains to how prevalent such violations of fundamental rights would be. They should be so widespread that virtually any citizen, properly situated, could raise the issue. An example of a law with such wide coverage was ruled upon in *Samahan ng mga Progresibong Kabataan v. Quezon City*,[75] which reviewed curfew ordinances issued by the local governments of Quezon City, Manila, and Navotas.

Not all constitutional questions are susceptible to fall under this exception. Questions involving the allocation of power among the different branches of government, those pertaining to the constitutional framework of the Philippine economy, and those relating to the amendment and revision of the Constitution are such that this Court can and should exercise judicial restraint. Such questions can await an actual case to be properly threshed out and decided by courts.

Third judicial review is proper, despite no actual facts, when it involves a constitutional provision invoking emergency or urgent measures, and such review can potentially be rendered moot by the transitoriness of the emergency. Thus, the questioned action would be capable of repetition, yet because of the transitoriness of the emergency involved, would evade judicial review and not allow any relief. Under such circumstances, this Court may provide controlling doctrine over the provision.

I (D)

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.

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.

II

Petitioner claims that the definition of profiteering is void for vagueness[76] and violates the constitutional right of an accused to be informed of the nature and cause of an accusation against them.[77]

This Court is not convinced.

Estrada v. Sandiganbayan[78] is instructive in cases assailing penal provisions as being void for vagueness:

The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of

certainty for the statute to be upheld — not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes.[79] (Citation omitted)

As Estrada teaches, flexibility is permissible in statutory provisions, for there are situations when it would be impossible for legislators to provide mathematical exactitude.

A statute is vague when:

. . . it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targetted [sic] by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[80] (Citation omitted)

Here, petitioner maintains that the provision on profiteering is vague because what is grossly excessive to one may be reasonable to another.[81] The law, petitioner says, would leave open the question of whose standards should be used when determining whether a price is grossly excessive and what an item's true worth is.[82]

While the provision certainly could set forth more exacting standards, petitioner has not established that it is void for vagueness. Petitioner has not shown that the law enforcers have unbridled discretion to determine that profiteering has been committed. Neither has it established that it did not have fair notice of the conduct to be avoided.

Although the Price Act does not define the terms "true worth" or "price grossly in excess" of true worth, our laws recognize that a reasonable price is a question of fact that can be determined based on the circumstances.[83] Moreover, the Price Act enumerates instances when there can be a prima facie evidence of profiteering, namely where the product:

(a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: Provided, that, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this act and as determined by the implementing agency, the prima facie provisions shall not apply[.][84]

Thus, the law specifies that the 10% increase will be the basis for a prima facie determination of profiteering. This provides some anchor for assessing whether profiteering has occurred, though that determination is inconclusive. The increase may, at the implementing agency's discretion, be used to determine further whether the prima facie presumption will hold.

The purpose of the law is "to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate business a fair return on investment." [85] The determination of prices "grossly in excess" of the "true worth" would thus be based on a product's availability, reasonable prices, and nondenial of a fair return for legitimate businesses to their investment.

Given the general circumstances before us, petitioner has not shown that the law enforcers have unbridled discretion in implementing the provision on profiteering. This Court is unconvinced that the provision is void for vagueness.

III

Having stated that, a discussion on the rationale for prohibiting profiteering is in order.

Classical economic doctrine normally points to a direct relationship between the quantities of a good demanded and a price increase. Consumers demand fewer goods as the price increases because of a perceived incentive to substitute the demand for a particular good, for something else.

However, basic necessities and prime commodities tend to be price inelastic. They tend to have no viable substitutes without some sacrifice in utility. Sacrifice in utility can mean eating less or a decline in nutrition. As a result, the amount usually in demand by the poorer sectors of our economy is not significantly affected by a change in price.

Based on the Statistical Tables on 2015 Family Income and Expenditure Survey,[86] 41.9% of the expenditures of Filipino families across all income classes were spent on food. However, the percentage is higher for Filipino families whose total annual income was under PHP 40,000.00, with 60.8% of their annual expenditures going to food:

Region
Major Expenditure
Group All
Income
Classes

Income class

Under 40,000

40,000 -
59,999

60,000 -
99,999

100,000 -
249,999

250,000
and over

Philippines Total family expenditure (in millions)

4,882,860

12,376

47,947

262,096

1,500,018

3,060,424

Percent to the total expenditure

100.00

100.0

100.0

100.0

100.0

100.0

Food expenditures

41.9

60.8

59.9

58.8

51.6

35.3[87]

Thus, wages in the poorer sectors remain at a constant low, and when the prices of basic commodities go up, a greater percentage of their budget must be allocated for these basic commodities. Consequently, they have less money to spend for other things they need to live. The poorer a person is, the greater the impact of price increase is.

This model of behavior becomes more accurate for middle- and high-income families. An increase in the price of a basic necessity, such as rice, corn, or bread, will induce them to either spend for similarly priced substitutes or to diet, without negative consequences. For them, the quantity they purchase is affected by a change in price. In other words, price is elastic.

This difference in elasticity between the poorer and richer sectors has consequences on the overall structure of the Philippine economy. Constant increases in the prices of basic necessities impede the ability of the poor to create the demand for the products they need. With a price increase, they end up paying more for the same quantity of basic necessities, and their disposable income diminishes. Additional goods that they need, they cannot afford. As a result, they opt out of that market entirely. This reduces demand and signals to the producers or entrepreneurs that selling a particular good will not create revenue. On the other hand, alternatives for the middle- and higher-income classes become more attractive to producers and entrepreneurs. Luxury goods demanded by the rich, such as perfumes and cars, will still be attractive.

If this is allowed to continue unregulated, our economy will produce goods and services mostly for middle- and high-income classes, making life difficult for the poor.

Considering this, it is reasonable for the government to closely monitor the prices of basic necessities and prime commodities. This helps define productivity for the goods that matter, which, in turn, provides a better quality of life for all.

This case involves not a luxury good, but a necessity used by all income classes: flour.

Unlike neoclassical economists who imagine a perfect market, the Consumer Act recognizes some of the imperfections in the market. It recognizes that, at times, there is a power differential between the buyer and the seller. Article 52 provides:

ARTICLE 52. Unfair or Unconscionable Sales Act or Practice. — An unfair or unconscionable sales act or practice by a seller or supplier in connection with a consumer transaction violates this Chapter whether it occurs before, during or after the consumer transaction. An act or practice shall be deemed unfair or unconscionable whenever the producer, manufacturer, distributor, supplier or seller, by taking advantage of the consumer's physical or mental infirmity, ignorance, illiteracy, lack of time or the general conditions of the environment or surroundings, induces the consumer to enter into a sales or lease transaction grossly inimical to the interests of the consumer or grossly one-sided in favor of the producer, manufacturer, distributor, supplier or seller.

This provision also suggests some factors to consider when determining the existence of an unfair and unconscionable act or practice:

In determining whether an act or practice is unfair and unconscionable, the following circumstances shall be considered:

a)

that the producer, manufacturer, distributor, supplier or seller took advantage of the inability of the consumer to reasonably protect his interest because of his inability to understand the language of an agreement, or similar factors;

b)

that when the consumer transaction was entered into, the price grossly exceeded the price at which similar products or services were readily obtainable in similar transaction by like consumers;

c)

that when the consumer transaction was entered into, the consumer was unable to receive a substantial benefit from the subject of the transaction;

d)

that when the consumer transaction was entered into, the seller or supplier was aware that there was no reasonable probability or payment of the obligation in full by the consumer; and

e)

that the transaction that the seller or supplier induced the consumer to enter into was excessively one-sided in favor of the seller or supplier.

This provision is found in the chapter dealing with deceptive, unfair, and unconscionable sales acts or practices,[88] under which the law, in Article 48, recognizes the State policy to "promote and encourage fair, honest and equitable relations among parties in consumer transactions and protect the consumer against deceptive,

unfair and unconscionable sales acts or practices."

Thus, the law recognizes that the consumer does not have the same access to information that the seller has. Leaving consumers to the predatory tactics of unscrupulous sellers would retard, rather than enhance, the benefits of an economic market. This asymmetry of information is a market imperfection that cannot be corrected without government intervention. Government intervention, then, is justified.

Profiteering is a specific, more insidious form of unscrupulous business practice in relation only to basic necessities and prime commodities. It makes its impact most heavily on the more vulnerable sectors of our economy.

Petitioner essentially believes that the threat of being charged with profiteering is a sword of Damocles to coerce sellers to cooperate with pricing demands from the Department of Trade and Industry. This allegedly violates the laissez-faire principle, which petitioner believes to be adopted by the Constitution.^[89] Petitioner also maintains that the Department of Trade and Industry and the Bureau of Trade Regulations and Consumer Protection have no power to question the pricing of private entities.^[90]

This appreciation of the Philippine legal economic framework is incorrect. The Constitution is not made up of neoclassical economics. It is the basic law.

The laissez-faire principle may appear to be included in Article II of the Constitution, Section 20 of which provides:

SECTION 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

But just as the Constitution recognizes the private sector and provides incentives for private enterprise, it also gives the highest priority to social justice and human rights. Article XIII, Section 1 of the Constitution mandates Congress as such:

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

Reading these provisions together reveals that the main rationale of Article II, Section 20 is not to give large and powerful actors free reign, but to acknowledge their role in achieving social justice. It is to that extent, and to that end, that the free market is considered within our legal system.

In a perfect world, as contemplated by neoclassical economists, a buyer and a seller transact based on perfect information, in a market with no structural imperfections: The price reflects the value of collective utility, collective costs, and efficiency; parties transact with the possibility of refusing the transaction and availing a substitute product.

But a perfect market does not exist. The self-correcting mechanisms of a free market are illusory: They do not take effect rapidly enough to avoid damage to the poorer sectors of an economy; they do not correct sufficiently due to market imperfections or realities in the market structure.

Even the government does not have perfect information. The most it can do is correct obvious and uncontested market imperfections, or intervene during emergencies, where need and profiteering are the highest. We cannot assume that the government does not have its imperfections, or that its agents are subject to the same laws of behavior as the market.

The Constitution recognizes this reality. It is, therefore, not infected with the abstract and simplified theoretical constructs of the illusory free market, or the neoclassical economist's framework.

In *JM Tuason & Co., Inc. v. Land Tenure Administration*,^[91] this Court extensively explained that the Constitution rejects the *laissez-faire* principle:

The more fundamental reason though why we find ourselves unable to yield deference to such opinion of Justice Montemayor, well-written and tightly-reasoned as it is, is its undue stress on property rights. It thus appears then that it failed to take into account the greater awareness exhibited by the framers of our Constitution of the social forces at work when they drafted the fundamental law. To be more specific, they were seriously concerned with the grave problems of inequality of wealth, with its highly divisive tendency, resulting in the generous scope accorded the police power and eminent domain prerogatives of the state, even if the exercise thereof would cover terrain previously thought of as beyond state control, to promote social justice and the general welfare.

This is not to say of course that property rights are disregarded. This is merely to emphasize that the philosophy of our Constitution embodying as it does what Justice Laurel referred to as its "nationalistic and socialist traits discoverable upon even a sudden dip into a variety of [its] provisions" although not extending as far as the "destruction or annihilation" of the rights to property, negates the postulate which at one time reigned supreme in American constitutional law as to their well-nigh inviolable character. This is not so under our Constitution, which rejects the doctrine of *laissez faire* with its abhorrence for the least interference with the autonomy supposed to be enjoyed by the property owner. *Laissez faire*, as Justice Malcolm pointed out as far back as 1919, did not take too firm a foothold in our jurisprudence. Our Constitution is much more explicit. There is no room for it for *laissez faire*. So Justice Laurel affirmed not only in the above opinion but in another concurring opinion quoted with approval in at least two of our subsequent decisions. We had occasion to reiterate such a view in the ACCFA case, decided barely two months ago.

This particular grant of authority to Congress authorizing the expropriation of land is a clear manifestation of such a policy that finds expression in our fundamental law. So is the social justice principle enshrined in the Constitution of which it is an expression, as so clearly pointed out in the respective dissenting opinions of Justice J.B.L. Reyes and Chief Justice Paras in the *Baylosis* case. Why it should be thus is so plausibly set forth in the ACCFA decision, the opinion being penned by Justice Makalintal. We quote: "The growing complexities of modern society, however, have rendered this traditional classification of the functions of government quite unrealistic, not to say obsolete. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only 'because it was better equipped to administer for the public welfare than is any private individual or group of individuals,' continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere else the tendency is undoubtedly towards a greater socialization of economic forces. Here of course this development was envisioned, indeed adopted as a national policy, by the Constitution itself in its declaration of principle concerning the promotion of social justice."^[92] (Emphasis supplied, citations omitted)

Similarly, in *Philippine Association of Service Exporters, Inc. v. Drilon*,^[93] this Court again said that the *laissez-faire* principle is not controlling in our jurisdiction. It alluded to the goals of social justice as the higher purposes of the State:

The non-impairment clause of the Constitution, invoked by the petitioner, must yield to the loftier purposes targetted [sic] by the Government. Freedom of contract and enterprise, like all other freedoms, is not free from restrictions, more so in this jurisdiction, where *laissez faire* has never been fully accepted as a controlling economic way of life.

This Court understands the grave implications the questioned Order has on the business of recruitment. The

concern of the Government, however, is not necessarily to maintain profits of business firms. In the ordinary sequence of events, it is profits that suffer as a result of Government regulation. The interest of the State is to provide a decent living to its citizens. The Government has convinced the Court in this case that this is its intent. We do not find the impugned Order to be tainted with a grave abuse of discretion to warrant the extraordinary relief prayed for.[94] (Emphasis supplied, citation omitted)

In *Marine Radio Communications Association of the Philippines, Inc. v. Reyes*,^[95] this Court explained the *laissez-faire* principle vis-à-vis the Constitution, relating the provisions on the private sector back to the requirements of social justice:

The novel provisions of the Charter prescribing private sector participation, especially in the field of economic activity, come, indeed, no more as responses to State monopoly of economic forces which has unfairly kept individual initiative from the economic processes and has held back competitiveness in the market. The Constitution does not bar however the Government from undertaking its own initiatives, especially in the domain of public service, and neither does it repudiate its primacy as chief economic caretaker of the nation.

The principle of *laissez faire* has long been denied validity in this jurisdiction. In 1969, the Court promulgated *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Government Corporations and Offices*, where it was held:

....

... The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only "because it was better equipped to administer for the public welfare than in any private individual or group of individuals," continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere else the tendency is undoubtedly towards a greater socialization of economic forces. Here of course this development was envisioned, indeed adopted as a national policy, by the Constitution itself in its declaration of principle concerning the promotion of social justice.

The requirements of social justice and the necessity for a redistribution of the national wealth and economic opportunity find in fact a greater emphasis in the 1987 Constitution, notwithstanding the novel concepts inscribed there. And two decades after this Court wrote it, ACCFA's message remains the same and its lesson holds true as ever.^[96](Citations omitted)

Far from embracing the doctrine of *laissez-faire*, the Constitution has enshrined a policy of protecting human rights and social justice, with a view toward rising productivity, full employment,^[97] and improving the quality of life of the people.^[98]

Thus, while the State policy is to establish a free market, it is a free market that regulates itself and is socially conscious, among others.^[99] "A 'free market' that is not a 'fair market' is not truly free."^[100] Therefore, the goal of law is not only to protect the free market, but to promote efficiency and an egalitarian economic structure. The law may provide an additional set of incentives that harnesses the entrepreneurial spirit to pursue nobler goals.

This Court is aware of additional costs to business enterprises as they comply with the requirements of regulation.

Regulatory costs, or the business costs of compliance, are not per se evil. Neither are they per se inefficient. In an environment marked by disparate power between sellers and consumers, asymmetries of information, and the ever-increasing possibility for abuse of market dominance and anti-competitive behavior, regulatory costs contribute to the assurance of efficiency. It is also a cost, properly borne by its most capable market actors—the producers themselves—to assure that the economic structure is appropriate to our domestic market: evolving

sustainable demand for products needed by the majority. By doing so, we come closer to the constitutional ideal of a national economy with a more equitable distribution of opportunities, income, and wealth, enjoying a sustained increase in the goods and services produced by the nation for the benefit of the people.

ACCORDINGLY, the Petition for Review on Certiorari is DENIED. The Regional Trial Court's April 3, 2012 Decision in Civil Case No. 72854 is AFFIRMED.

SO ORDERED.

Hernando, M. Lopez, Gaerlan, J. Lopez, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.

Gesmundo, C.J., see concurring opinion.

Caguioa, J., see concurring and dissenting opinion.

Lazaro-Javier, J., with concurrence and dissent.

Inting, J., with concurring and dissenting opinion.

Zalameda, J., join the concurring opinion of the Chief Justice.

Rosario,[*] J., on official leave.

[*] On official leave.

[1] Rollo, pp. 3-50. Filed under Rule 45 of the Rules of Court.

[2] Id. at 51-56. The April 3, 2012 Decision was penned by Presiding Judge Nicanor A. Manalo, Jr. of the Regional Trial Court of Pasig City, Branch 161.

[3] Id. at 62.

[4] Id. at 380-381.

[5] Id. at 62.

[6] Id.

[7] Id.

[8] Id. at 85.

[9] Id. at 65-66.

[10] Id. at 73.

[11] Id. at 381-382.

[12] Id. at 74.

[13] Id. at 383.

[14] Id. at 81.

[15] Id. at 83-103.

[16] DTI Administrative Order No. 07 (2006). Instituting the Simplified and Uniform Rules of Procedure for Administrative Cases Filed with the Department of Trade and Industry (DTI) for Violations of the Consumer Act of the Philippines and Other Trade and Industry Laws.

[17] Rollo, pp. 92-98.

- [18] Id. at 12.
- [19] Id. at 51-56.
- [20] Id. at 55.
- [21] Id. at 57.
- [22] Id. at 3-50.
- [23] Id. at 311-344.
- [24] Id. at 347-367.
- [25] Id. at 368-368-A.
- [26] Id. at 375-423, petitioner's Memorandum; 431-468, respondents' Memorandum.
- [27] Id. at 387.
- [28] Id. at 20.
- [29] Id. at 389.
- [30] Id. at 390.
- [31] Id. at 407.
- [32] Id. at 407-408.
- [33] Id. at 394.
- [34] Id.
- [35] Id. at 398.
- [36] Id. at 397.
- [37] Id. at 411.
- [38] Id. at 414.
- [39] Id. at 415.
- [40] Id. at 414.
- [41] Id. at 415.
- [42] Id. at 417.
- [43] Id.
- [44] Id. at 419.
- [45] Id. at 419-420.
- [46] Id. at 420.
- [47] Id. at 436.
- [48] Id. at 438.

[49] Id. at 439.

[50] Id. at 440.

[51] Id. at 441.

[52] Id. at 441-442.

[53] Id. at 447-448.

[54] Id. at 450.

[55] Id. at 453.

[56] J. Leonen, Concurring Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019 [Per J. Jardeleza, En Banc].

[57] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 892 (2003) [Per J. Carpio Morales, En Banc].

[58] *Parcon-Song v. Parcon*, G.R. No. 199582, July 7, 2020 [Per J. Leonen, En Banc]; *Tarrosa v. Gabriel C. Singson*, 302 Phil. 588 (1994) [Per J. Quiason, En Banc]; *Palencia v. People*, G.R. No. 219560, July 1, 2020 [Per J. Leonen, En Banc].

[59] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205 (2018) [Per J. Leonen, En Banc]; *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

[60] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387, 481 (2008) [Per J. Carpio Morales, En Banc].

[61] 721 Phil. 416, 519 (2013) [Per J. Leonen, En Banc].

[62] Id. at 519.

[63] G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, En Banc].

[64] Id. at 60-61. This pinpoint citation refers to a copy of the decision uploaded to the Supreme Court website.

[65] *Belgica v. Ochoa*, 721 Phil. 416, 519-520 (2013) [Per J. Leonen, En Banc].

[66] 800 Phil. 459 (2016) [Per J. Caguioa, En Banc].

[67] Id. at 490-491.

[68] See CONST., art. III, sec. 4.

[69] J. Leonen, Separate Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) (Per J. Abad, En Banc).

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

[71] Id. at 61.

[72] Id. at 61-62.

[73] G.R. No. 199582, July 7, 2020 [Per J. Leonen, En Banc].

[74] Id. at 20.

[75] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

[76] Rollo, p. 394.

[77] Id. at 397.

[78] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

[79] Id. at 352-351.

[80] *People v. Nazario*, 247-A Phil. 276, 286 (1988) [Per J. Sarmiento, En Banc].

[81] Rollo, p. 396.

[82] Id. at 397.

[83] CIVIL CODE, art. 1474.

[84] Republic Act No. 7581 (1992), sec. 5(2).

[85] Republic Act No. 7581 (1992), sec. 2.

[86] Statistical Tables on 2015 Family Income and Expenditure Survey, <<https://psa.gov.ph/content/statistical-tables-2015-family-income-and-expenditure-survey>> (last accessed on March 16, 2022).

[87] Philippine Statistics Authority, Table 9 Total Annual Family Expenditure by Major Expenditure Group, by Income Class and by Region: 2015, PHILIPPINE STATISTICS AUTHORITY WEBSITE <<https://psa.gov.ph/sites/default/files/attachments/hsd/article/TABLE%209%20%20Total%20Annual%20Family%20%20Expenditure%20by%20Major%20Expenditure%20Group%2C%20by%20Income%20Class%20and%20by%20Region%202015.pdf>> (last accessed on March 16, 2022).

[88] Republic Act No. 7394 (1992), Title III, Chapter 1.

[89] Id. at 384.

[90] Id. at 396.

[91] 142 Phil. 393 (1970) [Per J. Fernando, Second Division].

[92] Id. at 412-414.

[93] 246 Phil. 393 (1988) [Per J. Sarmiento, En Banc].

[94] Id. at 406.

[95] 269 Phil. 210 (1990) [Per J. Sarmiento, En Banc].

[96] Id. at 216-217.

[97] CONST., art. XIII, sec. 3 provides:

Labor

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and

decision-making processes affecting their rights and benefits as may be provided by law. The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[98] CONST., art. XII, sec. 1 provides:

National Economy and Patrimony

Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

[99] Republic Act No. 8799 (2000), The Securities Regulation Code.

[100] Securities and Exchange Commission v. Interport Resources Corporation, 588 Phil. 651, 723 (2008) [Per J. Chico-Nazario, En Banc].

CONCURRING OPINION

GESMUNDO, C.J.:

I fully concur with the ponencia. Nevertheless, I write to share my perspective on whether an action for declaratory relief, as a general rule, may be availed of before breach or violation of the assailed statute.

I respectfully answer in the affirmative.

Factual Background

The Director of the Bureau of Trade Regulation and Consumer Protection (BTRCP) sent a letter to Universal Robina Corporation (URC) seeking an explanation on its ex-mill flour prices and directing it to reduce such prices. BTRCP then filed a complaint against URC before the Department of Trade and Industry (DTI) for profiteering under the Price Act,[1] but the complaint was dismissed due to lack of certification against forum shopping. DTI later invited URC to meet regarding its prices. Thereafter, URC filed a petition for declaratory relief before the Regional Trial Court (RTC) praying that these issuances be declared invalid: (1) Section 5(2) of the Price Act which prohibits profiteering; (2) Executive Order No. 913 (EO 913) and Sec. 5, Rule IX of DTI Administrative Order No. 7 (DTI AO 7) for being an invalid exercise of quasi-legislative power and for violating due process; and (3) all issuances, acts, or proceedings based on these issuances.[2]

In its April 3, 2012 Decision, the RTC dismissed the petition for declaratory relief on the ground that it was prematurely filed because no justiciable controversy existed. URC moved for reconsideration but it was denied.

Hence, URC filed the present petition for review on certiorari assailing the RTC's Decision.

URC argued that it had the right to challenge the constitutionality of Sec. 5(2) of the Price Act because DTI had initiated a complaint against it. It further argued that the provision may be facially challenged, considering that penal statutes may be nullified on a facial challenge based on vagueness.

The core issues are: (a) whether Sec. 5(2) of the Price Act, which penalizes profiteering, is void for vagueness; (b) whether EO 913 and Sec. 5, Rule IX of DTI. AO 7 are invalid exercises of quasi-legislative power; and (c) whether the RTC properly dismissed the petition for declaratory relief for having no justiciable controversy. This opinion will focus on the third issue.

The ponencia held that the RTC erred in dismissing the petition for declaratory relief under Rule 63 of the Rules of Court (Rule 63) because there is an actual case or controversy. On the merits, it upholds the constitutionality of Sec. 5(2) of the Price Act.

It was discussed in the ponencia that an actual case or controversy exists when (1) there are actual facts to enable courts to intelligently adjudicate the issues;^[3] (2) or when there is a clear and convincing showing of a contrariety of rights.^[4] Discussing this concept of contrariety of rights, which does not require actual facts, the ponencia cited *Calleja v. Executive Secretary*^[5] (*Calleja*). It states that contrariety of legal rights is one that "can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of prima facie grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts."^[6]

It was further held that there are other instances when actual facts need not be required before the review of the law is permissible: (a) in cases involving free expression and its cognates, where a facial challenge may be allowed; (b) when a violation of fundamental rights is so egregious or imminent; and (c) in cases involving constitutional provisions where emergency or urgent measures are invoked.^[7]

Thus, declaratory relief as a remedy for constitutional challenge may succeed (1) when there is a clear and convincing contrariety of rights, or (2) in those instances when facial review is allowed. In this case, since there is a clear and convincing showing that a contrariety of rights exists between DTI and petitioner, then the action for declaratory relief is proper.

I agree with the ponencia that an action for declaratory relief under Rule 63 is the correct remedy. The RTC erred in dismissing the petition for declaratory relief. I likewise agree that Sec. 5(2) of the Price Act is constitutional.

The discussion-below will center on the issue of whether the RTC properly dismissed the petition for declaratory relief for having no justiciable controversy.

At the outset, it bears recognizing that the introduction and evolution of the expanded judicial power in the constitutional framework has altered the plane of constitutional adjudication in Our jurisdiction. Before such innovation, an action for declaratory relief has long been available to assail the constitutionality of a statute even when no breach has been committed. When a breach does occur, a litigant may resort to the ordinary remedies under the law. Despite these changes, and regardless of the remedy invoked, courts can only entertain cases when there is a justiciable controversy, consistent with the role of the Judiciary in a tripartite allocation of power in government. Hence, a reexamination of what actual or justiciable controversy covers in our current constitutional

regime seem essential. Notably, the understanding of justiciable controversy slightly varies when used in the traditional mode and expanded mode, especially when the constitutionality of a statute is assailed. Hence, the jurisprudential understanding of the actual or justiciable controversy element must, thus, be reviewed and harmonized.

Traditional and Expanded Judicial Power under the Constitution

Sec. 1, Article VIII of the Constitution defines traditional judicial power as the duty of the courts of justice "to settle actual controversies involving rights which are legally demandable and enforceable." On the other hand, expanded review power is the duty "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." In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,^[8] the Court emphasized that whether in the traditional or expanded mode, the exercise of judicial power requires the presence of an actual case or controversy.^[9]

Courts may pass upon the constitutionality of statutes when the requisites of justiciability are present.^[10] Foremost of these requisites is actual controversy,^[11] viz.:

As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or locus standi to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.^[12]

From the foregoing, it appears that actual controversy is a requirement of justiciable controversy separate from the requirement of standing, among others.

A. In Traditional Review

In its traditional sense, actual controversy is understood as one which involves "a contrariety of legal rights"^[13] (i.e., "conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution"^[14]). Separate but closely linked to the actual controversy requirement is the requirement of ripeness. "A justiciable controversy refers to an existing controversy that is appropriate or ripe for judicial determination."^[15] A question is considered ripe for adjudication when the act being challenged has had a "direct adverse effect on the individual or entity challenging it."^[16] It must be stressed that the conflict should be "ripe for judicial determination, not conjectural or anticipatory; otherwise, this Court's decision will amount to an advisory opinion concerning legislative or executive action."^[17]

Another requisite for justiciability is the legal standing requirement. A person challenging an act must have standing, which means a "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."^[18] Without such element, the issue presented would be purely hypothetical and academic.^[19]

Jurisprudence explains that legal standing "sharpens the presentation of issues." Thus, as a rule, a party will be allowed to raise a constitutional question only when "(1) he can show that he had personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action."^[20]

In *Velarde v. Social Justice Society*,^[21] a petition for declaratory relief was filed before the RTC seeking a declaratory judgment on the constitutionality of acts of religious leaders endorsing a candidate for an elective

office, or urging its members to vote for a specific candidate. When the case was elevated, the Court held that the petition failed to show a justiciable controversy, noting that there was no explicit allegation of any legal right sought to be protected. Moreover, there was no factual allegation that the rights of therein petitioners are "being subjected to any threatened, imminent[,] and inevitable violation that should be prevented by the declaratory relief." [22] It stressed that in a declaratory relief case, "a breach or violation should be impending, imminent[,] or at least threatened." [23]

Verily, it is worth stressing that in traditional judicial review, an actual injury need not be in existence for there to be a justiciable controversy. Its standing requirement is met when petitioner will sustain, or is threatened to sustain, the injury.

B. In Expanded Review

To reiterate, actual controversy remains to be a requisite in exercising the expanded power of review or the extraordinary jurisdiction of the courts, though it has been effectively simplified to mean "prima facie showing of grave abuse of discretion in the exercise of a government act." [24] *Pangilinan v. Cayetano* [25] articulates this point:

In deciding matters involving grave abuse of discretion, courts cannot brush aside the requisite of an actual case or controversy. The clause articulating expanded certiorari jurisdiction requires a prima facie showing of grave abuse of discretion in the assailed governmental act which, in essence, is the actual case or controversy. Thus, "even now, under the regime of the textually broadened power of judicial review articulated in Article VIII, Sec. 1 of the 1987 Constitution, the requirement of an actual case or controversy is not dispensed with." [26]

Accordingly, as an exception, mere enactment of the assailed law and issuance of its implementing rules, or approval of the challenged action were, in some cases, considered sufficient for a case to be justiciable.

In *Imbong v. Ochoa*, [27] the Court held that an actual controversy existed and the case is ripe for adjudication because "the [Reproductive Health] Law and its implementing rules have already taken effect and that budgetary measures to carry out the law have already been passed." [28] It also stressed the duty of the Judiciary to settle the dispute "when an action of the legislative branch is seriously alleged to have infringed the Constitution." [29]

In *Pimentel, Jr. v. Aguirre*, [30] the Court pronounced that "[b]y the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act." [31] Hence, the Court took cognizance of the petition assailing the constitutionality of the President's administrative order, which reduced to 5% the amount of internal revenue allotment for the local government units. It stressed that "when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts." [32]

In *Inmates of the New Bilibid Prison v. De Lima*, [33] the Court held that the mere issuance of the implementing rules has led to the ripening of a judicial controversy. [34] It explained that an actual controversy "may exist even in the absence of tangible instances when the assailed [implementing rules] has actually and adversely affected [therein] petitioners." [35] Besides, there is already a contrariety of legal rights that can be interpreted and enforced based on existing law and jurisprudence. On the one hand, therein respondents stand for the prospective application of the good conduct time allowance, while on the other hand, the petitioners therein argue that such provision violates the Constitution.

At this point, it bears underscoring that even in expanded review, courts are not allowed to issue advisory

opinions. The expanded review will be exercised when there is a real conflict between the parties, which means that "there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text,"[36] to wit:

Even the expanded jurisdiction of this Court under Article VIII, Section 1 [of the 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 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.[37]

To meet the ripeness requirement, "something [must have] been accomplished or performed by either branch [of government] before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself [or herself] as a result of the challenged action." [38]

In *Calleja*, an actual controversy was found to exist because in challenging the Anti-Terrorism Act, the consolidated petitions "sufficiently raised concerns regarding the freedom of speech, expression, and its cognate rights." [39] Further, they had "sufficiently shown that there is a credible and imminent threat of injury, as they may be subjected to the potential destructive consequences" [40] of the challenged law's provisions.

As seen from this discussion, actual controversy is required in both traditional and expanded judicial review, although its meaning differs depending on the applicable mode. Nevertheless, the other requisites of judicial review somehow have consistent meanings.

The Ponencia's Proposed Framework; Act No. 3736; Rule 63

The main contention in this case circles on the proposed framework of the ponencia regarding the appreciation of a petition for declaratory relief under Rule 63. This rule is based on Act No. 3736,[41] quoted as follows:

ACT NO. 3736

AN ACT EMPOWERING THE COURTS TO MAKE DECLARATORY JUDGMENTS, AND FOR OTHER PURPOSES

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 when 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. (Emphasis supplied)

Evidently, even the legislative branch unqualifiedly recognizes that a petition for declaratory relief may be availed of to question the construction or validity of a statute it has enacted. Notably, the law does not unequivocally state that a petition for declaratory relief may, as general rule, only be availed of after breach of the said statute.

The purpose of declaratory relief is to "relieve litigants of the common law rule that no declaration of rights may be judicially adjudged unless a right has been violated." [42] Justice Moran elucidated on its nature, thus:

Actions for declaratory relief had its roots way back in the Middle Ages. It is permitted on the theory that courts should be allowed to act not only when harm is actually done and rights jeopardized by physical wrongs or physical attack upon existing legal relations, but also when challenge, refusal, dispute, or denial thereof is made amounting to a live controversy. The uncertainty and insecurity which may thereby be occasioned may hamper or disturb the freedom of parties to transact business or to make improvement on their property rights. A situation is thus created wherein a judicial declaration may serve to prevent a dispute from ripening into violence or destruction. Courts thus become an instrument of both curative and preventive justice. [43] (Emphases supplied)

In this jurisdiction, Rule 63 contains the procedure for an action of declaratory relief. Sec. 1 thereof provides:

Section 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. [44] (Emphasis supplied)

The statutory anchor for this remedy is Act No. 3736 [45] where persons whose rights are "affected by a statute" may file an action to question its validity and seek a declaration of their rights and duties. [46] In such actions, the statute entitles the Attorney General (now Solicitor General) to participate. [47]

Justice Moran expounds that the meaning of the term "cause of action" in a proceeding for declaratory relief is broadened. It is not, as in ordinary civil actions, the wrong or delict by which the plaintiffs rights are violated, but it is extended to a mere denial, refusal, or challenge raising at least an uncertainty or insecurity which is injurious to the plaintiff's rights. [48] It is clarified that a complaint for declaratory relief should be filed before there has been a breach of contract or statute, the construction of which is sought. The law does not even require that there is an actual pending case. [49] When there is already a breach of the law, it will constitute as a bar to the complaint for declaratory judgment. [50]

Justice Moran further explains that in an action for declaratory relief, the requisite of justiciability is satisfied by an actual controversy or the ripening seeds of one, which exists between parties all of whom are sui juris and before the court, and that the declaration sought will be a practical help in ending the controversy. By "ripening seeds" the court means, 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 the full-blown battle which looms ahead. It is described as a state of facts indicating "imminent and inevitable" litigation, provided that the issue is not settled and stabilized by a tranquilizing declaration. [51]

As stated previously, the philosophy behind actions for declaratory relief is that courts should be allowed to act not only when harm is actually done and rights jeopardized by physical wrongs or physical attack upon existing legal relations, but also when challenge, refusal, dispute, or denial thereof is made amounting to a live controversy. Relief is, thus, confined to a case of actual controversy within the court's jurisdiction which may promulgate a declaratory judgment without need of injunction, execution, or other relief beyond the adjudication of the legal rights which are subject of the controversy between the parties. Basically, the question in each case would be whether the facts alleged, under all the circumstances, show that there is a substantial controversy between parties having adverse legal interest, of sufficient immediacy and reality to warrant the issuance of a declaratory relief.[52]

Accordingly, Sec. 1, Rule 63 allows a petition for declaratory relief to question the construction or validity of a statute. It may be availed of before breach or violation thereof.

Nevertheless, to stress, even if there is no breach or violation of a statute yet, it does not necessarily mean that an action for declaratory relief has no actual case or controversy. It must be emphasized that the existence of an actual controversy does not necessarily mean that there must be an actual breach or violation of a statute.

To highlight, an actual controversy is constitutionally required before courts can exercise judicial power. Again, under an action for declaratory relief, actual controversy pertains to the contrariety of legal rights.[53] Ripeness covers not only actual injury but also "immediate or threatened injury" to the petitioner.[54] Standing is met not only when petitioner "has sustained direct injury, but also when he "will sustain" or is about to sustain such injury should the challenged action be enforced.[55]

Actual controversy is required even in actions for declaratory relief. It bears stressing that the introduction of declaratory relief as a judicial remedy has expanded the concept of justiciability (e.g., actual controversy, ripeness, standing). Even when there is no breach yet, a case is already justiciable. Thus, courts can already resolve the action. For the case to be ripe for adjudication, however, the "breach or violation should be impending, imminent, or at least threatened." [56]

As expounded in the 1966 case of *Caltex (Philippines), Inc. v. Palomar*[57] (*Caltex*), the existence of justiciable controversy (i.e., actual controversy between persons with adverse interests) in a declaratory relief case is not negated by the lack of breach. Such justiciable controversy already exists when the disagreement is no longer nebulous or contingent, and the issues are clearly defined, even if breach has not yet been committed, thus:

Of course, no breach of the Postal Law has as yet been committed. Yet, the disagreement over the construction thereof is no longer nebulous or contingent. It has taken a fixed and final shape, presenting clearly defined legal issues susceptible of immediate resolution. With the battle lines drawn, in a manner of speaking, the propriety — nay, the necessity — of setting the dispute at rest before it accumulates the asperity, distemper, animosity, passion and violence of a full-blown battle which looms ahead x x x, cannot but be conceded.[58]
(Citations omitted)

The requisites for declaratory relief are: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.[59] These requisites were later expanded based on the commentary of Justice Regalado,[60] thus:

(1)

the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance;

(2)

the terms of said documents and the validity thereof are doubtful and require judicial construction;

(3)

there must have been no breach of the documents in question;

(4)

there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse;

(5)

the issue must be ripe for judicial determination; [and]

(6)

adequate relief is not available through other means or other forms of action or proceeding.[61]

Relevant for discussion are the fourth and fifth requisites.

The fourth requisite, justiciable controversy, as defined, weaves together the concepts of actual controversy, ripeness, and standing as previously discussed under judicial review. The Court has long held that even in "cases of declaratory relief, there must be an actual and justiciable, not merely theoretical, controversy." [62] To underscore, an action for declaratory relief based on theoretical or hypothetical questions cannot be filed for our courts are not advisory courts.[63] Verily, declaratory judgments should not be confused with advisory opinions, which were differentiated by Commissioner Bernas, to wit:

What thus distinguishes a declaratory judgment from an advisory opinion is that the former involves real parties with real conflicting legal interests whereas an advisory opinion is a response to a legal issue posed in the abstract of any case in which it may be presented. As a consequence of this distinction, an advisory opinion binds no one whereas a declaratory judgment is a final one and is forever binding on the parties. The former is thus not a judicial act but the latter is.[64]

Justice Moran confirms that an action for declaratory relief is a proceeding determinative of the rights of the parties to the case, and as such, exhibits characteristics quite distinct from those of an advisory opinion, rendered at the request of the executive or legislative department of the government to the handling down of which courts in this and jurisdictions have cast a definite aversion.[65]

The fact that parties must have "real conflicting legal interests" emphasizes the need for legal standing for the controversy to be justiciable. In actions for declaratory relief, the legal interest "is to be found in the danger of loss or of uncertainty of [one's] rights or other jural relations by a failure of the court to make the declaration." [66] This does not mean, however, that there must have been breach or violation of rights. To reiterate, in the 1966 case of *Caltex*, the Court held that in a declaratory relief case, the existence of justiciable controversy is not negated by the lack of breach. Justiciable controversy already exists when the disagreement is no longer nebulous

or contingent.[67] The reason of the parties in filing such action is to obtain a declaration that "will help in ending the controversy." [68]

In fine, a petition for declaratory relief under Rule 63 involves an actual case or controversy even though it is filed before a breach or violation of a statute is committed. Again, for the case to be ripe for adjudication, the "breach or violation should be impending or imminent." Such justiciable controversy already exists when the disagreement is no longer nebulous or contingent, and the issues are clearly defined, even if the breach has not yet been committed.

Accordingly, the benchmark to determine whether an action for declaratory relief has an actual controversy before breach of the statute is when such breach or violation is impending or imminent. Otherwise, there will be no justiciable controversy. This is how an action for declaratory relief is distinguished from a mere advisory opinion. An action for declaratory relief involves real parties with real conflicting legal interests whereas an advisory opinion is a response to a legal issue posed in the abstract of any case in which it may be presented.[69]

Again, an action for declaratory relief shall only be filed directly with the RTC; it cannot be filed immediately before this Court.

As applied, in this case, the petition filed before the RTC has an actual case or controversy even though there was no breach of the statute yet because of the impending or imminent violation by the parties of Sec. 5(2) of the Price Act.

Standards for delegation of legislative powers

Finally, on the merits, URC argues that the law forms an undue delegation of legislative power as the concept of "true worth" of a basic necessity and prime commodity, as with the "price grossly in excess" of that value, provide no standard for executive discretion.[70] It insists that the phrase "price grossly in excess" is vague because what is grossly excessive to one may be reasonable to another. It further questions whose standards should be used in determining whether a price is grossly excessive, and what an item's true worth is.[71]

The ponencia finds URC's arguments to be without merit and holds that the petitioner failed to establish the phrase "price grossly in excess" as void for being vague.

I agree.

In *Abakada Guro Party List v. Ermita*, [72] it was explained that:

In every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.

Clearly, the legislature may delegate to executive officers or bodies the power to determine certain facts or conditions, or the happening of contingencies, on which the operation of a statute is, by its terms, made to depend, but the legislature must prescribe sufficient standards, policies or limitations on their authority. While certain powers, such as the power to tax, cannot be delegated to executive agencies, details as to the enforcement and administration of an exercise of such power may be left to them, including the power to determine the existence of facts on which its operation depends.

The rationale for this is that the preliminary ascertainment of facts as basis for the enactment of legislation is not of itself a legislative function, but is simply ancillary to legislation. Thus, the duty of correlating information and making recommendations is the kind of subsidiary activity which the legislature may perform through its members, or which it may delegate to others to perform. Intelligent legislation on the complicated problems of modern society is impossible in the absence of accurate information on the part of the legislators, and any reasonable method of securing such information is proper. The Constitution as a continuously operative charter of government does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to application of legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate.[73]

In this case, the assailed provision states:

(2) Profiteering, which is the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth. There shall be prima facie evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: Provided, That, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this Act and as determined by the implementing agency, the prima facie provisions shall not apply[.][74] (Emphasis supplied)

I find that the challenged statute is clear and unambiguous. Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.[75] While the statute does not equivocally define "grossly in excess of its true worth," the law itself provides standards to determine such as when the commodity (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he/she sells or offers for sale to the general public by more than 10% of its price in the immediately preceding month. Thus, in implementing this law, the executive branch will not arbitrarily determine for itself the meaning of the phrase "grossly in excess of its true worth."

Further, "true worth" is synonymous to the phrase "true value." The true value of a product, which may include land, has been defined by the Court as early as 1910. In *Manila Railway Co. v. Fabie*,[76] it was held:

The value which ought to be shown is the market value of the land in that locality. By market value we mean the price fixed by buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established or shown by sale, public or private, in the ordinary way of business; the fair value of the property as between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be bought and sold in that locality. Undoubtedly, deeds conveying property in the same locality are of value in determining the market value of land in that vicinity, provided they are shown to have been made in the ordinary course of legal business and competition and that the prices stated therein were real and not affected by unusual conditions. Standing alone, however, they may be very misleading. One person may desire a piece of land in a given locality very much more than any other person. He may, for some special reason, desire it so much that he is willing to pay three or four times its value in order to secure it. A deed exhibiting such a value would be no criterion of the real value of property in that community.[77] (Emphasis supplied)

Evidently, true worth of a product, which is the same as its true value, is determinable due to its market value.

In my mind, the executive branch has a sufficient standard to determine the true worth of a product based on its market value, and whether profiteering is committed. Thus, I agree that the assailed provision is not

unconstitutional.

It must be emphasized that every statute has in its favor the presumption of constitutionality. As the Court held in *Cawaling, Jr. v. Commission on Elections*:^[78]

Every statute has in its favor the presumption of constitutionality. This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law. This Court, however, may declare a law, or portions thereof, unconstitutional, where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.^[79]

When a law is questioned before the Court, the presumption is in favor of its constitutionality. To warrant its nullification, there must be a clear and indubitable breach of the Constitution, not a doubtful and argumentative one. The burden of proving the invalidity of a law rests on those who challenge it.^[80] As URC failed to establish that the provision is utterly vague and devoid of any hope of interpretation, then it is not unconstitutional.

All told, I join the ponencia in DENYING the petition.

[1] Republic Act No. 7581, "An Act Providing Protection to Consumers by Stabilizing the Prices of Basic Necessities and Prime Commodities and by Prescribing Measures Against Undue Price Increases During Emergency Situations and Like Occasions."

[2] Ponencia, p. 4.

[3] *Id.* at 10.

[4] *Id.*

[5] G.R. No. 252578, December 7, 2021.

[6] *Id.*; see ponencia, p. 11.

[7] Ponencia, pp. 12-13.

[8] 802 Phil. 116 (2016).

[9] The rationale for this requirement goes into the role of the Judiciary in the constitutional framework of government. (See Concurring and Dissenting Opinion of Associate Justice Arturo D. Brion in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387, 679 [2008], which states that "[t]he limitation of the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government.").

[10] See *Lagman v. Ochoa*, G.R. No. 197422, November 3, 2020. "This justiciability requirement is 'intertwined with the principle of separation of powers.' It cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government."

[11] Note: The phrase "actual controversy" will be used in this Opinion interchangeably with "actual case or controversy." The terms "case" and "controversy" are used in the US Constitution in defining judicial power (See Article III, Section 2). In contrast, the Philippine Constitution uses only "controversies." It is submitted that in the Philippine context, these two terms may be used interchangeably. In the US context, the US Supreme Court held

in *Aetna Life Ins. Co. v. Haworth* (300 U.S. 227, 239 [1937]), that the "term 'controversies,' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature."

[12] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 244 (2018).

[13] *Private Hospitals Association of the Philippines v. Medialdea*, 842 Phil. 747, 782 (2018).

[14] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, supra at 244.

[15] *Velarde v. Social Justice Society*, 472 Phil. 285, 302 (2004).

[16] *Philippine Constitution Association v. Philippine Government*, 801 Phil. 472, 486 (2016). The question of ripeness asks "whether a case involves contingent events that may not occur as anticipated and whether there is actual injury to the party" in the suit.

[17] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, supra at 245.

[18] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra at 151.

[19] *Id.* at 151-152.

[20] *Tolentino v. Commission on Elections*, 465 Phil. 385, 402 (2004); *Private Hospitals Association of the Philippines v. Medialdea*, supra at 784.

[21] *Supra*.

[22] *Id.* at 303.

[23] *Id.* at 305.

[24] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra at 141.

[25] G.R. No. 238875, March 16, 2021.

[26] *Id.*

[27] 732 Phil. 1 (2014).

[28] *Id.* at 124.

[29] *Id.*

[30] 391 Phil. 84 (2000).

[31] *Id.* at 107. It held thus: "This is a rather novel theory—that people should await the implementing evil to befall on them before they can question acts that are illegal or unconstitutional. Be it remembered that the real issue here is whether the Constitution and the law are contravened by Section 4 of AO 372, not whether they are violated by the acts implementing it. In the unanimous en banc case *Tañada v. Angara*, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular

violation of the Constitution and/or the law is enough to awaken judicial duty." (Citation omitted)

[32] *Id.* at 108.

[33] G.R. No. 212719, June 25, 2019, 905 SCRA 599, 620.

[34] As further support, see *Philippine Constitution Association v. Philippine Government* (*supra* note 16. at 491), where the Court dismissed the petitions questioning the constitutionality of the un-enacted Bangsamoro Basic Law for lack of actual controversy. It held that "[u]nless enacted into law, any proposed Bangsamoro Basic Law pending in Congress is not subject to judicial review." The case also cited *Montesclaros v. COMELEC* (433 Phil. 620, 634 [2002]), where the Court held "that it has no power to declare a proposed bill constitutional or unconstitutional because that would be in the nature of rendering an advisory opinion on a proposed act of Congress. The power of judicial review cannot be exercised in vacuo."

[35] *Id.*

[36] *Confederation for Unity, Recognition and Advancement of Government Employees v. Abad*, G.R. No. 200418, November 10, 2020.

[37] *Id.*

[38] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1090 (2017); see also *Private Hospitals Association of the Philippines v. Medialdea* (*supra* note 13, at 783), where the Court held that consistent with the ripeness requirement, even when the challenged law and implementing rules have been issued, the petition must still allege that "an actual or direct injury as a result of a discretion gravely abused." Absent such "actual and direct injury, any pronouncement by the Court would be purely advisory or sheer legal opinion, in view of the mere hypothetical scenarios" that would be presented in the petition. (*Italics supplied*)

[39] *Calleja v. Executive Secretary*, *supra* note 5.

[40] *Id.*

[41] Approved on November 22, 1930.

[42] *Calleja v. Executive Secretary*, *supra* note 5. Based on *Velarde v. Social Justice Society* (*supra* note 15, at 305), a cause of action ordinarily involves a violation of a right constituting breach. This concept of a cause of action in ordinary civil actions does not strictly apply in the special civil action for declaratory relief. "The reason for this exception is that an action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of rights arising thereunder. Nevertheless, a breach or violation should be impending, imminent or at least threatened."

[43] Moran, *Comments on the Rules of Court* (1957 ed.), pp. 141-142; for a deeper study of the evolution of declaratory relief in various jurisdictions, see Borchard (1918), *The Declaratory Judgment - A Needed Procedural Reform*, *Yale Law Journal*, Vol. 28(1), pp. 1-32.

[44] Herrera, *Remedial Law*, Vol. III (1999 ed.), *Special Civil Actions*, Rules 57-71, p. 191.

[45] Notably, it appears that the requirement of "before breach" under Act No. 3736 refers only to the construction of "contracts," and not the other instruments. The "before breach" requirement in the construction of statutes was added only in the 1940 Rules of Court. (Section 2 of Act No. 3736 states thus: "Section 2. Before Breach. — A contract may be construed before there has been a breach thereof. Section 2, Rule 66 of the 1940 Rules of Court states thus: "Section 2. Before Breach. — A contract or statute may be construed before there has been a breach thereof.") It may be argued that this "before breach" requisite only applies when the case involves

construction, not validity.

[46] 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.

* Notably, it appears that the requirement of "before breach" under Act No. 3736 refers only to the construction of "contracts," and not the other instruments. The "before breach" requirement in the construction of statutes was added only in the 1940 Rules of Court. (Section 2 of Act No. 3736 states thus: "Section 2. Before Breach. — A contract may be construed before there has been a breach thereof. Section 2, Rule 66 of the 1940 Rules of Court states thus: "Section 2. Before Breach. — A contract or statute may be construed before there has been a breach thereof.") It may be argued that this "before breach" requisite only applies when the case involves construction, not validity.

[47] Act No. 3736, Sec. 5.

[48] Moran, Comments on the Rules of Court (1980 ed.), p. 152.

[49] Id. at 153.

[50] Id.

[51] Id. at 154.

[52] Id. at 154-155.

[53] See *Inmates of the New Bilibid Prison v. De Lima*, supra note 33, at 619.

[54] *Samahan ng mga Progresibong Kabataan v. Quezon City*, supra note 38; see also *Private Hospitals Association of the Philippines v. Medialdea*, supra note 13.

[55] *Association of Medical Clinics for Overseas Workers Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 8, at 151.

[56] *Velarde v. Social Justice Society*, supra note 15.

[57] 124 Phil. 763 (1966).

[58] Id. at 773.

[59] Id. at 770, citing *Tolentino v. Board of Accountancy*, 90 Phil. 83, 88 (1951); *Delumen v. Republic*, 94 Phil. 287, 288 (1954); *Edades v. Edades*, 99 Phil. 675, 677-678 (1956). The Court held that based on then Rule 66 of the 1940 Rules of Court and Rule 64 of the subsequent rules: "In amplification, this Court, conformably to established jurisprudence on the matter, laid down certain conditions sine qua non therefor, to wit: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination."

[60] Regalado (2005), *Remedial Law Compendium*, Vol. 1 (9[th] ed.), pp. 766-767.

[61] See the enumeration from Regalado (2005), *Remedial Law Compendium*, Vol. I, id., as adopted in the Dissenting Opinion of Justice Leonen in *Department of Finance v. Dela Cruz, Jr.*, 767 Phil. 611, 665 (2015); *Republic v. Roque*, 718 Phil. 294, 304 (2013); *Ferrer, Jr. v. Roca, Jr.*, 637 Phil. 310, 317-318 (2010); *Almeda v.*

Bathala Marketing Industries, Inc., 566 Phil. 458, 467 (2008); Jumamil v. Cafe, 507 Phil. 455, 462 (2005).

[62] Jimenez v. Roa, 148-A Phil. 286, 289 (1971). Back then, the requisites for justiciability of an action for declaratory relief were the following: "an actual controversy, or the ripening of one, exists between parties all of whom are sui juris and before the court, and that the declaration sought will be a practical, help in ending the controversy."

[63] City of Lapu-Lapu v. Philippine Economic Zone Authority, 748 Phil. 473, 513 (2014). Accordingly, the statement in Southern Hemisphere v. Anti-Terrorism Council (646 Phil. 452, 482 [2010]), that "[w]ithout any justiciable controversy, the [petitions become] pleas for declaratory relief" is inaccurate.

[64] J. Bernas, The 1987 Constitution of the Republic of the Philippines A Commentary (2003 ed.), p. 924.

[65] Moran, Comments on the Rules of Court (1980 ed.), p. 148.

[66] Borchard (1918), The Declaratory Judgment – A Needed Procedural Reform, Yale Law Journal, Vol. 28(1), p. 18.

[67] Caltex (Philippines), Inc. v. Palomar, supra note 57, at 773.

[68] International Hardwood and Veneer Co. of the Philippines v. University of the Philippines, 277 Phil. 636, 652 (1991).

[69] J. Bernas, The 1987 Constitution of the Republic of the Philippines A Commentary (2003 ed.), p. 924.

[70] Ponencia, p. 14.

[71] Id.

[72] 506 Phil. 1 (2005).

[73] Id. at 109, 111-112.

[74] Republic Act No. 7581, Sec. 5(2).

[75] Abakada Guro Party List v. Ermita, supra at 113.

[76] 17 Phil. 206 (1910).

[77] Id. at 208.

[78] 420 Phil. 524 (2001).

[79] Id. at 530-531.

[80] Spouses Lim v. People, 438 Phil. 749, 755 (2002).

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

Before the Court is a Petition for Review on Certiorari, which challenges the validity of the following: (1) "profiteering" as defined in Section 5(2) of the Price Act,[1] for being vague; (2) Executive Order (E.O.) No. 913, s. of 1983;[2] and Section 5, Rule IX of Administrative Order No. 07-06[3] of the Department of Trade and Industry (DTI) for being an invalid exercise of quasi-legislative power; and (3) all issuances, acts, or proceedings

based on these issuances.

The ponencia denies the petition for review — the basis for which primarily rests on the finding that the offense of "profiteering," as defined in the Price Act, is not vague.

Furthermore, after much deliberation, the ponencia significantly settles the purported confusion on a couple of procedural matters: first, that a petition for declaratory relief is generally the appropriate remedy to raise the constitutionality of a treaty, statute, or ordinance;^[4] and second, a justiciable controversy exists when there is a showing of a contrariety of legal rights susceptible of judicial resolution, even if there is no actual injury or harm to the party seeking relief.

While I disagree that the challenged provision penalizing profiteering under the Price Act is not vague, I concur with the pronouncements that deliberately veer away from the narrow interpretation of the actual case or controversy requirement. A clear demonstration of harm or injury on the party initiating the petition is not necessary in order for the Court to consider the controversy justiciable. To be sure, the courts' duty to only settle "actual controversies"^[5] does not mean it can only resolve those with actual harm or injury.

In summary, I submit this Concurring and Dissenting Opinion to expound on the following points:

(1)

The Constitution explicitly requires an actual case or controversy ripe for adjudication, as this assures that the Judiciary does not intrude into the areas committed to its co-equal branches. As such, there can be no exception, to the requirement of a justiciable controversy, which are grounded on the doctrine of transcendental public interest.

What the "transcendental importance of the issue" can justify to be relaxed are the technical rules on standing and hierarchy of courts.

As well, the paramount public interest involved may also justify the Court's adjudication of a case that has ceased to present an actual case or controversy — i.e., an issue that has been rendered moot and academic by virtue of a supervening event.

It must be emphasized, however, that the "transcendental importance of the issue" and "paramount public interest" do not, as they cannot, serve as basis for the exercise of judicial power when there is no actual or live controversy at the onset. Exercising judicial power in the absence of an actual case automatically renders the decision an advisory opinion. Thus, the Court cannot adopt exceptions to the requirement of justiciable controversy and effectively expand the bounds of its constitutional authority.

(2)

There is no argument that, before the Court may exercise its power of judicial review, there should be an actual case or controversy that is ripe for adjudication. The crux therefore lies in the proper understanding of "actual case or controversy that is ripe for adjudication."

The attribution of a literal meaning to an actual case or controversy by requiring actual harm or injury to the

party seeking relief — initially proposed by the ponente during the deliberations of this case — would require a wholesale upending of settled rules and entrenched jurisprudence. Needless to state, this interpretation is palpably inconsistent with the long line of cases[6] where the Court has consistently and repeatedly held that an actual case or controversy exists where there is a "contrariety of legal rights susceptible of judicial resolution." [7]

(3)

Neither is the corollary requirement of "ripeness" tantamount to an actual harm or injury to petitioner Universal Robina Corporation (URC). A case is not any less ripe if URC has not yet been apprehended pursuant to the challenged action, or has not sufficiently sustained some adverse consequence as a result of the implementation thereof.

If the Court were to apply the standard of actual harm, the Court will never be able to take cognizance of petitions that clearly establish a patent violation of the Constitution or a statute, or a prima facie showing of grave abuse of discretion. Even if the questions raised are purely one of law and the Court is not asked to speculate or rule on a hypothetical set of facts, these are, by these restrictive standards, premature because URC did not sustain any actual harm or injury. This departs not only from the well-established principle that an actual case or controversy must demonstrate a contrariety of legal rights, but also from the Court's duty to uphold the Constitution, especially when there is an alleged infringement thereof by the Legislative or Executive department.

(4)

Verily, the framework for determining the presence of an actual case cannot be confined to whether URC has actually sustained an injury as a result of the action being challenged.

Whether there is a contrariety of legal rights, and in turn, a justiciable controversy, are determinable according to the context of each case before the Court. In addition to the factual background of the petition, the Court should examine the issues raised and the relief sought. If the Court may grant the relief, or resolve the question of law without having to speculate or create abstract and hypothetical scenarios, it is an exercise in futility to await URC's apprehension or actual damage before the Court may intervene. The Court has, time and again, held that if the petitioner is able to demonstrate that the purported threat or incidence of injury is not merely hypothetical, or either of the Executive and Legislative branches has performed or accomplished an act, it is beyond cavil that the controversy is real, not speculative.[8] The existence of an immediate or threatened injury as a result of the act complained of also suffices to satisfy the requirement of ripeness.[9]

(5)

The essence of an action for declaratory relief is the filing of the petition before a breach or violation of the act being challenged.

Furthermore, Rule 63 of the Rules of Court explicitly provides that a party may resort to this remedy to determine any question of validity or construction arising from a statute or governmental regulation. For this

purpose, the Rules of Court requires the participation of the Solicitor General.

That being said, declaratory relief does not serve as a back door to challenge the constitutionality of statutes or regulations on its face. While an action for declaratory relief must be filed before a breach or violation of the act being challenged, an actual case or controversy or the "ripening seeds" thereof is still mandatory. In this regard, URC was justified in initiating the action for declaratory relief, there being a ripening seed of controversy by virtue of the DTI's continued inquiry on the prices for its ex-mill flour.

(6)

Finally, I disagree that there are sufficient standards in the Price Act on what constitutes "profiteering," or the "sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth." The "true worth" of a basic necessity or a prime commodity, and the determination that the price is "grossly in excess" of such true worth, are subject to the personal predilections or varying criteria of the regulating agency. As such, "profiteering," punishable under Section 5(2) of the Price Act, is vague for failing to give proper notice on what conduct to avoid.[10]

To clarify, the Court may deny petitions that fail to present an actual case or controversy. The present framework for judicial inquiry does not also preclude the Court from denying petitions that raise factual issues, seek advisory opinions, ask resolutions for moot or academic questions, and violate the hierarchy of courts. As well, the Court may reject the application of any principle invoked as an exception to these rules, such as transcendental importance.

To be clear, this Concurring and Dissenting Opinion does not suggest any further exception to these rules. Rather, it respectfully submits that the Court must not confine the framework for assessing the justiciability of the controversy to an actual harm or injury, or to an arbitrary set of "concrete facts." The facts that may arise when issues of constitutionality or validity are raised vary from case to case, and more often, these facts are not the subject of inquiry before the Court. The Court should not pin down the standard on a moving target as this would result in a more elusive concept of a justiciable controversy that only confuses rather than clarifies.

I.

At the onset, it must be emphasized that the Court may exercise its power of judicial review only when there is an actual case or controversy. The requirement of having an actual case or controversy is not a self-imposed boundary; it is, rather, a constitutional mandate. Courts are the repositories of judicial power. Judicial power, in turn, "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 grave abuse of discretion." [11]

This requirement of having an "actual case" is "a manifestation of the commitment to the adversarial system. Hence, the Court has no authority to pass upon issues of constitutionality through advisory opinions and it has no authority to resolve hypothetical or feigned constitutional problems or friendly suits collusively arranged between parties without real adverse interests." [12] In other words, "[t]he 'case-or-controversy' requirement bans this court from deciding 'abstract, hypothetical or contingent questions,' lest the court give opinions in the nature of advice concerning legislative or executive action." [13]

To be sure, there are no exceptions to the requirement of an actual case or controversy. Even the doctrine of transcendental importance, which is often invoked to excuse non-compliance, may only justify the relaxation of the doctrine of hierarchy of courts, or the requirement of standing. This case presents the appropriate platform to

clarify that transcendental importance does not apply as an exception to the justiciability of the controversy, except when the case has been rendered moot and academic by virtue of a supervening event.

A. The doctrine of transcendental importance is not an exception to the justiciability of a controversy

In *Gios-Samar, Inc. v. Department of Transportation and Communications*[14] (*Gios-Samar*), the Court provided an exhaustive discourse on the application of the doctrine of transcendental importance. Historically, the doctrine was used to justify the relaxation of rules on standing but it eventually evolved to make allowances for disregarding the proscription against direct recourse to the Court.[15] *Gios-Samar* clarifies, however, that transcendental importance may excuse the violation of the hierarchy of courts only when the resolution of factual issues is not necessary to the resolution of the constitutional issues.[16] Concurring with this position, the herein ponente even went so far as to caution against the use of this doctrine as an exception to justiciability:

Thus, I propose that we further tame the concept that a case's "transcendental importance" creates exceptions to justiciability. The elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear. They should be properly pleaded by the petitioner so that whether there is any transcendental importance to a case is made an issue. That a case has transcendental importance, as applied, may have been too ambiguous and subjective that it undermines the structural relationship that this Court has with the sovereign people and other departments under the Constitution. Our rules on jurisdiction and our interpretation of what is justiciable, refined with relevant cases, may be enough.

However, consistent with this opinion, we cannot wholly abandon the doctrinal application of cases with transcendental importance. That approach just does not apply in this case. Here, we have just established that cases calling for questions of fact generally cannot be cases from which we establish transcendental importance. Generally, we follow the doctrine of respect for hierarchy of courts for matters within our concurrent original jurisdiction.[17] (Emphasis supplied)

Reiterating this position, the herein ponente further opined in his Separate Opinion in *Republic v. Maria Basa Express Jeepney Operators and Driver's Association, Inc.*[18] (*Maria Basa*) that "raising transcendental importance x x x is not an exception to the requirement of an actual case or controversy." [19] Clearly, therefore, the transcendental importance of the issue can only justify non-compliance with other procedural requirements, like locus standi or hierarchy of courts. It does not authorize the Court to adjudicate cases that fail to present a justiciable controversy.

In some instances, the paramount importance of the issue may be invoked as an exception to a case that has been rendered moot and academic. That said, the Court assumes jurisdiction over controversies that would have been otherwise considered moot and academic only under clear delimited circumstances, as when: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the constitutional issue raised required the formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the case was capable of repetition yet evading review.[20]

To emphasize, the constitutional mandate of all courts in the Philippines, including this Court, is to "settle actual controversies involving rights which are legally demandable and enforceable." [21] The requirement of actual case or controversy is not a mere procedural hurdle established by jurisprudence; rather, it stems from the nature of judicial power as drawn up by the Constitution. Certainly, the Court cannot create exceptions that explicitly run counter to the constitutional grant of judicial power.

In this regard, the herein ponente's words in *Gios-Samar* and *Maria Basa* should still ring true. The Court cannot simply dispense with the requisite actual controversy at the first instance. The requirement of an actual case or

controversy applies to all cases, except in the rare instances when the Court recognizes the exceptions to the moot and academic principle. Thus, if the Court is minded to rely on the long line of cases involving the lack of actual case or controversy, then it has no choice but to dismiss the petition on that ground, nothing more. Ruling on the merits of a petition that the Court already categorizes as not having a justiciable controversy is the very definition of an advisory opinion. If the Court would rather rule on the merits, then it has no choice but to rule that there is a justiciable controversy so as not to be violative of the Constitution.

To reiterate, "transcendental public interest" as an exception applies to cases where the issue has been rendered moot, or was filed by one who has no locus standi, or was filed in violation of the hierarchy of courts. In all of these cases, a real justiciable controversy exists, or at least had existed — there was merely some supervening event that caused certain procedural defects or missteps.

At this juncture, it should be pointed out that the Court has often frowned upon litigants who expect to cure the procedural infirmities of their petitions by bare invocations of the doctrine of transcendental public interest, or the interest of substantial justice.[22] Inasmuch as the Court does not sanction the suspension of procedural rules because of an undemonstrated claim of paramount public interest, neither should it inattentively apply this doctrine to rule on a case it has already deemed as non-justiciable. Ruling otherwise is antithetical to the nature of the Court's judicial power, as the application of this doctrine requires the Court to make value judgments on which policies warrant the relaxation of procedural rules.[23] The case of *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*[24] is instructive on this matter: "[t]he 'transcendental importance' standard, in particular, is vague, open-ended and value-laden, and should be limited in its use to exemptions from the application of the hierarchy of courts principle. It should not carry any ripple effect on the constitutional requirement for the presence of an actual case or controversy." [25]

B. The exceptional circumstances proposed in the ponencia should not be construed as exceptions to the requirement of a justiciable controversy

While I do not disagree with the ponencia's enumeration of exceptions to the requirement of actual facts, I respectfully submit that these are not actual exceptions to the requisite actual case or controversy.[26] Rather, these are only restatements of the current rules on the Court's exercise of its power of judicial review.

I expound.

In my Separate Concurring and Dissenting Opinion in *Calleja v. Executive Secretary*[27] (*Calleja*), I opined that the justiciability of a controversy is not determined solely by the nature of the challenge raised before the Court, or on the nature of the statute or regulation being assailed. The presence of an actual case or controversy is independently determinable from the grounds invoked by the parties to question the constitutionality of the statute or ordinance. The fact that a facial challenge is mounted against a statute, regardless of whether it regulates speech or not, does not automatically mean that there is an absence of a justiciable controversy.

While the Court in *Calleja* adopted a limited facial analysis framework, i.e. finding that constitutional questions on the vagueness of penal statutes should be limited to free speech cases, it was recently recognized in *Maria Basa* that "the doctrine of vagueness x x x has evolved and is at present, not merely limited to free speech cases anymore." [28] Thus, while therein petitioners facially challenged a traffic regulation, an issuance that evidently does not regulate speech, the Court did not rule that the petition was premature or did not present an actual case or controversy. To the contrary, the Court proceeded to pass upon the question of the assailed regulation's supposed ambiguity. In this regard, there should be no dispute that a facial challenge on the ground of vagueness is susceptible of judicial resolution even without "actual harm" or "further facts," as the very nature of a vagueness challenge requires the Court to examine the language of the law itself or the relevant regulations in connection

thereto.

Accordingly, the ripeness of the controversy for judicial resolution is not negated by the fact that petitioner mounted a facial challenge on a law or regulation that does not regulate speech. Neither is the converse true — a facial challenge of a law involving freedom of expression and its cognate rights does not lack an actual case or controversy. Whether the statute or regulation infringes on the freedom of speech, as in the ponencia's first exceptional circumstance, or egregiously violates fundamental rights, as the ponencia proposes in the second exceptional circumstance, there already is an actual case or controversy ripe for judicial determination by virtue of the mere enactment or effectivity of the measure being assailed. Simply put, the performance of an act that violates the Constitution or contravenes a statute is sufficient to constitute a justiciable controversy.[29]

Similarly, in the ponencia's third exceptional circumstance, there is an actual case or controversy that already exists because of the emergency or urgent measure being invoked. That judicial review can possibly render the case moot does not necessarily negate the presence of a justiciable controversy. Until such time that the supervening event occurs, there is reasonable basis for the Court to adjudicate the matter at hand. And, in the event that the case has become moot, the Court may find that the exceptions to mootness may apply.

From the foregoing, I respectfully submit that the "exceptions" itemized by the ponencia are not new, but only echo the current guidelines for the exercise of judicial review.

II.

The ponencia settles, once and for all, any confusion as to what constitutes a justiciable controversy

The ponencia further rules that "for the exercise of judicial review, actual facts resulting from the assailed law, as applied, may not be absolutely necessary in all cases." [30]

I concur. This ruling should therefore finally put to rest any confusion as to what constitutes a justiciable controversy

Jurisprudence has established that there may be an actual case or controversy even if the injury is merely threatened or imminent. Stated differently, the issue does not become hypothetical or abstract solely by virtue of the nature of the injury on the party seeking relief.

On this point, the Court has consistently held that an actual case or controversy exists when there is a "conflict [or contrariety] of legal rights" [31] or an "evident clash of the parties' legal claims." [32] This is distinguished from theoretical questions that compel the courts to speculate on a hypothetical set of facts in order to arrive at a conclusion. [33] The antagonistic assertion of rights or the opposing legal claims of either party must be susceptible of judicial resolution, or must admit of specific reliefs that courts can grant. [34]

In order to be justiciable, the issue must also be ripe for adjudication. A case is considered ripe when "something had then been accomplished or performed by either [the Executive or Legislative] branch x x x and the petitioner [alleges] the existence of an immediate or threatened injury to itself as a result of the challenged action." [35] The Court in *Belgica v. Executive Secretary* [36] (*Belgica*) explained as follows:

Jurisprudence defines an actual case or controversy as "one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.'" Subsumed in the requirement of an actual case or controversy is the requirement of ripeness, and "[f]or a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the

challenged action." To be sure, the Court may not wield its power of judicial review to address a hypothetical problem. "Without any completed action or a concrete threat of injury to the petitioning party, the act is not yet ripe for adjudication." [37] (Emphasis supplied)

Clearly, if the petitioner is able to demonstrate a "threat of injury," or that he or she is "immediately in danger of sustaining some direct injury as a result of the act complained of," [38] the case is considered ripe. This is not negated by the absence of so-called "actual facts" — especially when the alleged act or omission on the part of the respondents exceed the Constitution or violate their mandate under the law. This holds especially true for cases that invoke the Court's expanded power of judicial review, as "a prima facie showing of grave abuse of discretion in the assailed governmental act" [39] essentially constitutes the actual case or controversy.

In *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain* [40] (Province of North Cotabato), the Court rejected the argument that the petition challenging the constitutionality of the Memorandum of Agreement on the Ancestral Domain (MOA-AD) is premature. Simply put, it was immaterial that the MOA-AD was not yet executory at the time of the filing of the petition because the petition established that therein respondents departed from their mandate and committed acts in violation of the Constitution. The Court therefore found that there was a justiciable controversy it was duty-bound to resolve:

The present petitions pray for Certiorari, Prohibition, and Mandamus. Certiorari and Prohibition are remedies granted by law when any tribunal, board or officer has acted, in the case of certiorari, or is proceeding, in the case of prohibition, without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Mandamus is a remedy granted by law when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use or enjoyment of a right or office to which such other is entitled. Certiorari, Mandamus and Prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials.

....

As the petitions allege acts or omissions on the part of respondent that exceed their authority, by violating their duties under E.O. No. 3 and the provisions of the Constitution and statutes, the petitions make a prima facie case for Certiorari, Prohibition, and Mandamus, and an actual case or controversy ripe for adjudication exists. When an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. [41] (Emphasis and underscoring in the original)

When the judiciary's expanded power of judicial review is invoked in a petition for certiorari, prohibition, or mandamus, it is sufficient that the questioned law has been enacted, or that the challenged action was approved. No further overt acts are necessary to render the controversy ripe. [42] Petitioners need not await the "implementing evil to befall on them," [43] or for them to actually suffer the injury or harm before challenging these acts as illegal or unconstitutional. [44]

These doctrinal rulings were recently reiterated in *Maria Basa*, where the certiorari jurisdiction of the Court was invoked to assail the issuances on traffic violations, the various provisions of which were alleged to violate the Constitution. Only two of the numerous petitioners were actually apprehended pursuant to the challenged regulations, but the Court found the case ripe for adjudication, even with respect to those who were not found liable under the assailed traffic issuances. No further facts were required from these other petitioners, as the Court found that they were able to establish an immediate and imminent threat of apprehension for violation of the challenged regulations, therein petitioners being drivers and operators of public utility vehicles. Furthermore, "the

petitions alleged acts or omissions on the part of public respondents that exceed their authority"[45] that demonstrate an evident clash of the parties' legal claims. Accordingly, the Court proceeded to rule on the substantive merits of this case.

The foregoing clearly demonstrates that the mere enactment of the law or regulation that is repugnant to the Constitution is sufficient to render the controversy justiciable. Ruling otherwise would require the Court to revamp years of precedents to reconcile the new meaning ascribed to justiciability.[46]

III.

An action for declaratory relief is an appropriate remedy to challenge the constitutionality of a statute

An action for declaratory relief originated from Act No. 3736,[47] passed as far back as 1930, empowering courts to make declaratory judgments on questions of construction or validity arising from a statute. This was adopted in Rule 66 of the 1940 Rules of Court, and eventually carried over to the subsequent revisions to the Rules — i.e., Rule 64 of the 1964 Rules of Court, Rule 63 of the 1997 Rules of Civil Procedure, and Rule 63 of the 2019 Amendments to the 1997 Rules of Civil Procedure. In all of its iterations, declaratory relief must be initiated "before breach or violation" of the written instrument, statute, ordinance, or governmental regulation. Thus, by its very nature, an action for declaratory relief will not prosper if a breach or violation of the plaintiff's right already occurred.[48]

In his annotations to the Rules of Court, Former Chief Justice Manuel V. Moran emphasized that declaratory relief, as a remedy, is rooted on the principle that "courts should be allowed to act not only when harm is actually done and rights jeopardized by physical wrongs or physical attack upon legal relations, but also when challenge, refusal, dispute or denial thereof is made amounting to a live controversy x x x. Courts thus become an instrument of both curative and preventive justice."[49]

On this point, the ponencia states that declaratory relief is a proper procedural remedy to question the constitutionality of a statute.[50] Again, I concur. This position is supported not only by the Court's pronouncements on declaratory relief, but also by referring to the Rules of Court.

Section 1, Rule 63 of the Rules of Court on declaratory relief[51] provides that:

x x x [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 RTC to determine any question of construction or validity arising, and for a declaration of his [or her] rights or duties thereunder. (Emphasis and underscoring supplied)

The Rules of Court further provide that notice should be given to the Solicitor General "[i]n any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation,"[52] or if an "ordinance is alleged to be unconstitutional." [53] By the text of the Rules of Court alone, therefore, declaratory relief is the proper procedural vehicle to assail the constitutionality of a statute.

As early as the 1957 case of *Araneta v. Gatmaitan*,[54] the Court already ruled that the constitutionality of an executive order can be ventilated in a declaratory relief proceeding.[55] Subsequently, in *Republic v. Roque*,[56] a petition for declaratory relief was filed in the Regional Trial Court (RTC) to question the constitutionality of Republic Act No. (RA) 9372, or the Human Security Act of 2007. When it reached the Court, the Court meticulously discussed the propriety of dismissing the petition for declaratory relief not because it was an improper procedural tool, but rather because the requisites for a petition for declaratory relief to prosper were not

all present. The Court En Banc said:

Case law states that the following are the requisites for an action for declaratory relief: first, 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.

Based on a judicious review of the records, the Court observes that while the first, second, and third requirements appear to exist in this case, the fourth, fifth, and sixth requirements, however, remain wanting.[57] (Emphasis supplied)

Then, in *Film Development Council of the Phils. v. Colon Heritage Realty Corp.*[58] (FDCP), the Court En Banc declared Sections 13 and 14 of RA No. 9167 unconstitutional in a case involving a petition for declaratory relief initially filed before an RTC. The FDCP case involved a national law that had the effect of confiscating the income of certain local government units arising from amusement taxes that the latter may opt to impose, thereby undermining the local autonomy provisions of the Constitution. Cebu City filed a petition for declaratory relief in the RTC to question the constitutionality of Sections 13 and 14 of RA No. 9167 which was eventually granted. When the case reached the Court, it upheld the RTC's declaration of unconstitutionality of the said provisions.

Likewise, in *Commission on Elections v. Cruz*,[59] the Court En Banc decided on the constitutionality of a proviso in Section 2 of RA No. 9164,[60] which was assailed via a petition for declaratory relief filed with the RTC. After the RTC declared the assailed proviso unconstitutional, therein petitioner Commission on Elections (COMELEC) filed a Rule 45 petition before the Court on a pure question of law. The Court proceeded to rule on the issue and passed upon the merits of the substantive arguments of the parties — notably without any debate as to the propriety of the remedy availed of.

In *Concepcion, Jr. v. COMELEC*,[61] the Court likewise emphasized that among the available remedies to question the constitutionality of a statute or a quasi-legislative act of an administrative agency is a petition for declaratory relief:

What is significant in appreciating this defect in the petition is the legal reality that the petitioner was not without any viable remedy to directly challenge Resolution 7798. A stand-alone challenge to the regulation could have been made through appropriate mediums, particularly through a petition for declaratory relief with the appropriate Regional Trial Court under the terms of Rule 63 of the Rules of Court, or through a petition for prohibition under Rule 65 to prevent the implementation of the regulation, as the petitioner might have found appropriate to his situation. As already mentioned, a challenge can likewise be made in the course of validly contesting an adjudicatory order of the COMELEC. Such challenge, however, cannot be made in an original petition for certiorari under Rule 65 dissociated from any COMELEC action made in the exercise of its quasi-judicial functions.[62] (Emphasis supplied)

Parenthetically, the Court deems petitions that challenge the constitutionality of a statute or regulation as one for declaratory relief, even if those petitions are captioned as other actions. Thus, in *Clark Investors and Locators Association, Inc. v. Secretary of Finance*,[63] the Court found that the petition for certiorari, which sought to annul a Revenue Regulation imposing excise and value added tax on the importation of petroleum products, was actually an action for declaratory relief. Since the certiorari petition sought, in essence, the declaration of the unconstitutionality or illegality of the challenged rule, the Court deemed that it was one for declaratory relief over which it may only exercise its appellate jurisdiction.[64]

In *Zomer Development Co., Inc. v. Special Twentieth Division of the Court of Appeals*,^[65] the Court, through the herein ponente, ruled in the same manner. Before reaching the Court, the complaint filed in the trial court was captioned as one for "Declaration of Nullity of Notice of Sale, Certificate of Sale & TCTs and Declaration as Unconstitutional Sec. 47, RA No. 8791," which the herein ponente deemed as a petition for declaratory relief.^[66]

It cannot, therefore, be said that the Court does not consider declaratory relief as a proper procedural vehicle to assail the constitutionality of a law. With due respect, the Court should not effectively rewrite the Rules of Court by making these pronouncements that are inconsistent not only with jurisprudence, but with the explicit text of Rule 63.

IV.

An action for declaratory relief, even if filed before breach or violation of the challenged act, requires an actual case or controversy — and one exists here

Having established that declaratory relief is proper to assail the constitutionality of a statute, it must be emphasized that declaratory relief, much like all other cases, still requires the presence of a justiciable controversy.

To be sure, an action for declaratory relief does not serve as a back door for constitutional issues, there being no exception carved out for the actual case or controversy requirement. The essential requisites for an action for declaratory relief include an actual justiciable controversy or "the 'ripening seeds' of one between persons whose interests are adverse."^[67] The Court expounds on this further in *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*^[68] (Viron):

The following are the essential requisites for a declaratory relief petition: (a) there must be a justiciable controversy; (b) the controversy must be between persons whose interests are adverse; (c) the party seeking declaratory relief must have a legal interest in the controversy; and (d) the issue invoked must be ripe for judicial determination.

The requirement of the presence of a justiciable controversy is satisfied when an actual controversy or the ripening seeds thereof exist between the parties, all of whom are *sui juris* and before the court, and the declaration sought will help in ending the controversy. A question becomes justiciable when it is translated into a claim of right which is actually contested.^[69] (Emphasis supplied)

The "ripening seeds" of a controversy was recognized as a standard to determine the justiciability of an action for declaratory relief as early as the 1940 Rules of Court, which adopted declaratory judgments as a remedy in Rule 66.^[70] It refers to a dispute that has "accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead."^[71] While there is yet no breach of the plaintiff's rights, sufficient facts should accrue in order to "[transcend] the boundaries of what is merely conjectural or anticipatory."^[72] The challenge must therefore be anchored on a definite refusal, denial, or omission that raises an uncertainty or insecurity injurious to the plaintiff's rights — not a mere fear or doubt.^[73]

Thus, in *Viron*, the Court ruled that the requirement of a justiciable controversy was not lacking when therein respondents, bus operators with terminals in Metro Manila, filed petitions for declaratory relief to challenge the constitutionality of the Executive Order directing the elimination of bus terminals along major thoroughfares in Metro Manila, even when there was no actual closure of their bus terminals yet. Aside from the immediate effectivity of said Executive Order, the Court found that there were circumstances evincing the intention of the government to proceed with this project, which was apparent from the ongoing planning and construction of a centralized station.

In this case, while the complaint for profiteering before the DTI was dismissed at the time URC filed the petition for declaratory relief with Pasig City RTC Br. 161, it does not mean that a justiciable controversy had ceased to exist. It must be emphasized that URC received another letter from the DTI inviting it to discuss its prices, and submit an explanation to the finding of the Bureau of Trade Regulation and Consumer Protection that its ex-mill prices were higher than expected — even after the complaint for profiteering was dismissed.[74] Thus, to paraphrase Viron, these are circumstances evincing the intention of the government to proceed with a complaint for profiteering, which is apparent from the sending of the so-called invitation to URC "to discuss its prices."

It is also important to point out that the complaint against URC was dismissed based only on a technicality: for failing to attach a certification against non-forum shopping. It is clear, therefore, that despite the dismissal of the profiteering complaint, URC may still be held liable for profiteering under the provisions of the law it assails. In other words, there exists a real threat of criminal prosecution under the challenged provision of the Price Act.

To be sure, it is well to point out that the factual scenario in this case is precisely the right opportunity for a petition for declaratory relief to be filed. As in Viron, if URC had waited further before it filed a petition for declaratory relief, it would simply be dismissed for the reason that petitions for declaratory relief need to be filed "before breach or violation"[75] of the statute or instrument assailed. In other words, the ponencia aptly holds that there is a contrariety of legal rights in this case even if URC was not charged with profiteering at the time it filed the petition for declaratory relief.[76] If URC had waited, then there would already be a breach that would cause the dismissal of a petition for declaratory relief. Such a ruling would imply that there is virtually no proper time to avail one's self of declaratory relief as a remedy, for there is no real room between its prematurity and the expiration of its availability.

V.

The present case is an appeal raising pure questions of law from the trial court's decision in an action for declaratory relief

As well, it should be emphasized that the present petition is an appeal by certiorari under Rule 45 of the Rules of Court. The case originated from an action for declaratory relief from Pasig City RTC Br. 161, and as such, it was filed directly with the Court on a pure question of law — whether the Price Act's definition of profiteering is void for being vague. In this regard, it is incongruous to await the apprehension or imprisonment of URC's officers before the Court resolves the issue.

The Court has concurrent original jurisdiction with the Court of Appeals and the RTC over petitions for certiorari, prohibition, and mandamus against lower courts and bodies.[77] Despite having concurrent jurisdiction, the Court is still the court of last resort. "[L]itigants do not have unfettered discretion to invoke the Court's original jurisdiction."[78]

For this purpose, the doctrine of hierarchy of courts dictates that direct recourse to the Court is allowed only to resolve questions of law. Thus, in Gios-Samar, the Court held that the decisive factor for allowing the direct resort to the Court via the issuance of extraordinary writs is the nature of the questions raised by the parties. Even when the parties allege "serious and important reasons"[79] such as transcendental importance, direct resort to the Court via the issuance of extraordinary writs should be allowed only when the resolution of factual issues is not necessary to the resolution of the constitutional issues. Failure to comply is sufficient cause for the dismissal of the petition.

On the other hand, Section 1, Rule 63 of the Rules of Court explicitly states that an action for declaratory relief should be brought in the appropriate RTC. Considering that actions for declaratory relief must originate from the

RTC, those which involve challenges to the constitutionality or validity of laws or governmental regulation would only be elevated to the Court via an appeal under Rule 45 of the Rules of Court. Hence, unless there is a question of fact included in the issues raised to the Court, there should be no dispute as to the Court's exercise of its appellate jurisdiction.

To emphasize anew, this case stemmed from URC's petition for declaratory relief before Pasig City RTC Br. 161. Said RTC held that URC's anticipation of a lawsuit is not sufficient to constitute a justiciable controversy and, therefore, dismissed the petition for being premature. Aggrieved, URC filed the present petition for review under Rule 45 of the Rules of Court and elevated the constitutional challenge to several provisions of the Price Act to this Court.

The issues URC raised are pure questions of law, which do not involve an examination of the probative value of the evidence presented by the litigants. The constitutionality of the challenged provisions of the Price Act may certainly be resolved without necessarily making a finding as to whether URC's ex-mill flour prices were excessive.

This would certainly not be the case had URC invoked the expanded power of judicial review by filing a petition for certiorari or prohibition directly with the Court. In such instance, the Court may belabor the procedural issue of justiciability, and dismiss the petition for failing to observe the doctrine of hierarchy of courts. Needless to state, however, there being no question of fact raised in the petition, the Court may take cognizance of the petition.

VI.

Profiteering, as defined in the Price Act, suffers from the vice of vagueness

In line with my position that declaratory relief is proper, the case presents a justiciable controversy that the Court can, and should, resolve, in order that due process is served. Accordingly, I am in accord with the Court properly addressing and resolving this case on the merits.

With respect to the merits of the petition, URC mainly argues that "profiteering," which is penalized under Section 5(2) of the Price Act, fails to provide a sufficiently definite warning as to the proscribed conduct. In particular, URC points out that the phrase "price grossly in excess of its true worth" in the definition of profiteering lacks sufficient standards, as the Price Act does not provide any criteria on what constitutes a reasonable price. Since the essence of the violation is hinged on the determination of such reasonable price, URC asserts that the DTI is vested with unbridled discretion to decide when there is a violation of Section 5(2) of the Price Act.[80]

The ponencia disagrees and holds that the definition of profiteering under the Price Act does not suffer from the vice of vagueness because the "true worth" of a basic necessity or prime commodity is capable of determination:

Although the Price Act does not define the terms "true worth" or "price grossly in excess" of true worth, our laws recognize that a reasonable price is a question of fact that can be determined based on the circumstances. Moreover the Price Act enumerates instances when there can be a prima facie evidence of profiteering, namely where the product:

....

Thus, the law specifies that the 10% increase will be the basis for a prima facie determination of profiteering. This provides some anchor for assessing whether profiteering has occurred, though that determination is inconclusive. The increase may, at the implementing agency's discretion, be used to determine further whether

the prima facie presumption will hold.

The purpose of the [Price Act] is "to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate business a fair return on investment." This goal entails the determination of the "true worth" of a product: availability, reasonable prices, and nondenial of a fair return for legitimate businesses to their investment. [81]

With respect, I disagree with the finding that profiteering, as defined under Section 5(2) of the Price Act, does not suffer from the vice of vagueness. By overlooking the vagueness in the statutory proscription against profiteering, and reading into the law what is not apparent from its text, the Court illegitimately ventures into the territory reserved for the legislative.

Section 5(2) of the Price Act penalizes the act of profiteering, which is defined as follows:

(2) Profiteering, which is the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth. There shall be prima facie evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: Provided, That, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this Act and as determined by the implementing agency, the prima facie provisions shall not apply. (Emphasis supplied)

It may be gleaned from this provision that the gravamen of profiteering is to sell the product "at a price grossly in excess of its true worth." Accordingly, it is important to determine a product's "true worth" and what constitutes a grossly excessive price vis-à-vis said true worth.

An examination of the Price Act or the Rules and Regulations Implementing the Price Act[82] (IRR) reveals that there are no criteria for a basic necessity or a prime commodity's true worth. But while this phrase may be construed in its ordinary acceptance, that is — the actual value or the total cost of the product,[83] the law further lacks objective standards on when the price is set grossly in excess thereof, or merely in excess of the cost of production that should give the manufacturer, seller, or producer of such goods a reasonable return on their investment.

Even if the Price Act provides for prima facie evidence on the presence of profiteering, these still fail to adequately notify affected persons of the conduct proscribed by the Price Act. In particular, Section 5(2) states that there is prima facie evidence of profiteering when a person raises the price of the product "by more than 10% of its price in the immediately preceding month." However, the basic necessity or the prime commodity's price in the past month is not the sole baseline to compute the product's true worth. While it may serve as a consideration in any succeeding price change, the current price of the product is one factor among the numerous variables that determine a product's cost. In other words, the actual cost or true worth of a product is not directly equivalent to its previous market price.

But more than violating the due process rights of persons who may be held liable for profiteering, I respectfully submit that its vagueness is chiefly offensive to the principle of separation of powers.

As mentioned, a vague statute not only fails to give fair notice of the proscribed conduct, but also "leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle." [84] This is an implicit recognition of the need to constrain law enforcement to the implementation of the statute, leaving no room for different interpretations that could result in different applications of the law. Thus, a vague penal law, even if it does not involve speech, may also be facially challenged for violating the principle of

separation of powers as Congress has the sole power to define and penalize offenses.[85] The Court's ruling in *SPARK v. Quezon City (SPARK)* further explains how the principle of separation of powers is corollary to the void-for-vagueness doctrine:

Essentially, petitioners only bewail the lack of enforcement parameters to guide the local authorities in the proper apprehension of suspected curfew offenders. They do not assert any confusion as to what conduct the subject ordinances prohibit or not prohibit but only point to the ordinances' lack of enforcement guidelines. The mechanisms related to the implementation of the Curfew Ordinances are, however, matters of policy that are best left for the political branches of government to resolve. Verily, the objective of curbing unbridled enforcement is not the sole consideration in a void for vagueness analysis; rather, petitioners must show that this perceived danger of unbridled enforcement stems from an ambiguous provision in the law that allows enforcement authorities to second-guess if a particular conduct is prohibited or not prohibited. In this regard, that ambiguous provision of law contravenes due process because agents of the government cannot reasonably decipher what conduct the law permits and/or forbids. In *Bykofsky v. Borough of Middletown*, it was ratiocinated that:

A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on [ad hoc] and subjective basis, and vague standards result in erratic and arbitrary application based on individual impressions and personal predilections.[86] (Emphasis supplied; citation omitted)

Since there is nothing in the Price Act or its IRR that objectively sets standards on when a price is "grossly in excess of [the product's] true worth," the implementing authority has unfettered and unbridled authority to unilaterally impose its own guidelines, or revise its standards without having to notify the persons who may be held liable for Section 5(2). Thus, even if it may be argued that a basic necessity or prime commodity's "true worth" may be objectively determined "based on the circumstances,"[87] there remains a subjective element in the proscription against profiteering.

In effect, those who may be subject of profiteering complaints bear the burden of justifying the price they fixed for the sale of their product, depending on the guideposts of the implementing agency at the time they were notified of a possible violation. Worse, even if the price was fixed in good faith consideration of the profit sought to be generated, producers, manufacturers, and sellers of basic necessities and prime commodities may nonetheless be held liable for profiteering if the implementing agency deems that the price was grossly excessive following the standards it itself fixed. This is what has apparently happened here in the DTI's complaint for profiteering against URC, in which it cited various reasons for its liability, such as: the reduction in wheat prices and freight cost, the imposition of zero tariff, and the appreciation of the Philippine Peso.[88] For its part, URC explained that its prices reflect the three-year price movement of wheat in the world market and its other operational costs, which include labor, utilities, demurrage, and barging and trucking costs.[89]

In all, I do not have any objections to the State's mechanism for price control, especially during periods of calamity, emergency, widespread illegal price manipulation, and other similar situations. These statutory regulations are, as aptly recognized by the ponencia, for the general welfare of the consuming public. But while the implementing agencies of the Price Act, such as the DTI in this case, may monitor and impose price controls for basic necessities and prime commodities, this authority does not include full unfettered discretion to determine the true worth of these goods, or more importantly, when producers, manufacturers, or sellers have set their prices grossly in excess of such true worth.

To be sure, this should not be taken to mean that mathematical exactitude is required in defining the offense of profiteering. However, the standards are not apparent from the subject law or its IRR, or from a reasonable interpretation thereof. The Court should not sanction the prosecution of persons under a penal provision that completely fails to provide sufficient warning of the proscribed conduct — especially when such offense is

punishable with imprisonment for a period of five (5) to fifteen (15) years, and a fine of not less than P5,000.00 but not more than P2,000,000.00.[90]

VII.

To reiterate, there is a justiciable controversy if "there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." [91] Such contrariety of legal rights may be determined from the issues raised by the parties, the factual circumstances surrounding said issue, and within the context of the relief ultimately sought from the Court. Surely, if the issue raised is purely one of law — as in this case — waiting for URC to suffer an injury or for respondents to commit further overt acts would not make any material difference on the issue presented for the resolution of the Court. In such instances, the Court is called upon to exercise its duty. As the Court held in *Tañada v. Angara* [92] —

x x x the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

x x x it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution x x x. [93] (Emphasis supplied)

Thus, I concur with the ponencia in settling any confusion as to what constitutes a justiciable controversy. When the issue raised before the Court is whether the challenged act is unconstitutional or invalid, the only overt act indispensable to render the controversy ripe is the performance thereof. In other words, the questioned act — whether it be a statute, regulation, or some other administrative issuance on the part of the Court's co-equal branches — remains to be the subject of the inquiry. In this particular case where the vagueness of the Price Act is raised, the Court may, as the ponencia does, ultimately resolve the issue of vagueness by examining the very text of the law itself. The factual circumstances of URC, as the petitioner, were not even marginally significant in the ponencia's consideration of the allegation of vagueness.

While concrete or tangible facts may, in some instances, provide a complete background that may assist the Court in the resolution of the issue, this is not necessarily always the case. As demonstrated by *Province of North Cotabato, SPARK, Belgica, and Maria Basa*, among others, the requirement of ripeness may be satisfied if the petitioner can establish an imminent or immediate injury that would result from the challenged action.

All told, the justiciability of a controversy should not be equated to the existence of an actual injury or harm. As well, I respectfully submit that the prerequisites to the exercise of the power of judicial review, as they are currently worded, do not open the door wide open for parties to directly file non-justiciable cases before the Court. Established precedents empower the Court to exercise its discretion to dismiss actions that fail to comply with the requirements of justiciability, or those which violate the hierarchy of courts.

Based on these premises, I VOTE to grant the petition.

[1] Republic Act No. 7581, dated May 27, 1992.

[2] Titled "STRENGTHENING THE RULE-MAKING AND ADJUDICATORY POWERS OF THE MINISTER OF TRADE AND INDUSTRY IN ORDER TO PROTECT CONSUMERS," dated October 7, 1983.

[3] Titled "INSTITUTING THE SIMPLIFIED AND UNIFORM RULES OF PROCEDURE FOR ADMINISTRATIVE CASES FILED WITH THE DTI FOR VIOLATIONS OF THE CONSUMER ACT OF

THE PHILIPPINES AND OTHER TRADE AND INDUSTRY LAWS," dated July 14, 2006.

[4] Ponencia, p. 9.

[5] CONSTITUTION, Art. VII, Sec. 1.

[6] Republic v. Maria Basa, G.R. Nos. 206486, 212604, 212682, and 212800, August 16, 2022, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68571>>, [Per Lopez, J. J. (En Banc), Gesmundo, C.J., Hernando, Inting, Zalameda, Gaerlan, Rosario, Dimaampao, Marquez, JJ., concurred. Leonen, J., filed his separate concurring and dissenting opinion. Caguioa, J., filed his concurring opinion. Lazaro-Javier, J., filed her concurring opinion. Lopez, M., Singh, JJ. were on leave. Kho, J., no part]; Belgica v. Executive Secretary, G.R. No. 210503, October 8, 2019, 922 SCRA 23 [Per Curiam (En Banc), Bersamin, C.J., Reyes, A. B. Jr., Gesmundo, Reyes, J.C., Jr., Hernando, Carandang, Lazaro-Javier and Zalameda, JJ., concurred. Carpio, Perlas-Bernabe, Leonen and Caguioa, JJ., see separate opinion. Peralta, J. joins J. Carpio's opinion. Inting, J., was on official business.]; Inmates of the New Bilibid Prison v. De Lima, G.R. Nos. 212719 & 214637, June 25, 2019, 905 SCRA 599 [Per Peralta, J. (En Banc), Bersamin, C.J., Carpio, Del Castillo, Perlas-Bernabe, Caguioa, Reyes, A. B. Jr., Gesmundo, Reyes, J.C., Jr., Hernando, Carandang, Lazaro-Javier and Inting, JJ., concurred. Leonen, J., filed Separate Concurring Opinion Jardeleza, J., was on wellness leave]; Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, 815 Phil. 1060 (2017) [Per Perlas-Bernabe, J. (En Banc), Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Mendoza, Jardeleza, Caguioa, Martires, Tijam and Reyes, Jr., JJ., concurred. Leonen, J., see separate opinion]; Province of North Cotabato v. GRP Peace Panel on Ancestral Domain, 589 Phil. 387 (2008) [Per Carpio Morales, J. (En Banc), Quisumbing, J., concurred. Puno, C.J., please see separate concurring opinion. Ynares-Santiago, J., see separate concurring opinion; I concur with separate opinion of C.J. Puno. Carpio, J., see concurring opinion. Austria-Martinez, J., also concurred with C.J.'s separate opinion. Corona, J., shared the dissent of Mr. Justice Tinga. Azcuna, J., concurred in a separate opinion. Tinga, J., dissents from the result. See separate opinion. Chico-Nazario, Velasco, Jr., Nachura and Brion, JJ., please see dissenting opinion. Reyes, J., certified that J. Reyes filed a Separate Opinion concurring with the majority. — Puno, C.J. (RSP). Leonardo-de Castro, J., please see concurring and dissenting opinion].

[7] Republic v. Maria Basa, id.; Belgica v. Executive Secretary, id. at 53; Inmates of the New Bilibid Prison v. De Lima, id. at 619; Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, id. at 1090; Province of North Cotabato v. GRP Peace Panel on Ancestral Domain, id. at 481.

[8] Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 6, at 1091.

[9] Id. at 1090-1091.

[10] Republic Act No. 7581, Sec. 5(2).

[11] CONSTITUTION, Art. VIII, Sec. 1. Underscoring supplied.

[12] Concurring and Dissenting Opinion of Associate Justice Arturo D. Brion in Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain, supra note 6, at 680, citing Joaquin Bernas, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (1996 Ed.).

[13] Lozano v. Nograles, 607 Phil. 334, 340 (2009).

[14] 849 Phil. 120 [Per Jardeleza, J. (En Banc), Bersamin, C.J., Peralta, Del Castillo, Perlas-Bernabe, Caguioa, Reyes, A. B. Jr., Gesmundo, Reyes, J. C. Jr., Hernando, Carandang and Lazaro-Javier, JJ., concurred; Carpio, J., joined the Concurring Opinion of Leonen, J., with note "We do not abandon here the doctrine of transcendental

importance.," Leonen, J., filed his Separate Concurring Opinion].

[15] Id. at 161.

[16] Id. at 175.

[17] Separate Concurring Opinion of Associate Justice Marvic M.V.F. Leonen in *Gios-Samar, Inc. v. Department of Transportation and Communications*, id. at 194-195.

[18] *Supra* note 6.

[19] Separate Opinion of Associate Justice Marvic M.V.F. Leonen in *Republic v. Maria Basa*, id. See also *Kilusang Magbubukid ng Pilipinas v. Aurora Pacific Economic Zone and Freeport Authority*, G.R. Nos. 198688 & 208282, November 24, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67550>>. [Per Leonen, J. (En Banc), Peralta, C.J., Perlas-Bernabe, Gesmundo, Hernando, Carandang, Inting, Zalameda, Lopez, Gaerlan and Rosario, JJ., concur. Caguioa, Lazaro-Javier, and Delos Santos, JJ., were on official leave.]

[20] *David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006).

[21] CONSTITUTION, Art. VIII, Sec. 1. Underscoring supplied.

[22] See *Falcis v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, 917 SCRA 197, 362. See also *Chamber of Real Estate and Builders' Association, Inc. v. Energy Regulatory Commission*, 638 Phil. 542 (2010).

[23] See Separate Opinion of Associate Justice Arturo D. Brion in *Cawad v. Abad*, 764 Phil. 705, 743 (2015).

[24] 802 Phil. 116 (2016) [Per Brion, J. (En Banc), Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Reyes and Perlas-Bernabe, JJ., concurred; Leonen, J., concurred in the result, and filed Separate Opinion; Jardeleza, J., took no part, prior OSG action; Caguioa, J., was on leave]. Emphasis supplied.

[25] Id. at 159.

[26] See ponencia, pp. 12-13.

[27] G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 7, 2021, accessed <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67914>>.

[28] *Republic v. Maria Basa*, *supra* note 6, the pertinent portion reads in full:

With regard to the doctrine of vagueness, it may be well to point out that it has evolved and is at present, not merely limited to free speech cases anymore. Thus, this Court shall not stay its hand from assessing the constitutionality of [a] statute or regulation by the mere theory that the same is void for being vague. To emphasize, in [SPARK], the Court was asked to assess the vagueness of various curfew ordinances for minors in Quezon City, Manila, and Navotas. The challenge was anchored on its supposed absence of parameters in identifying suspected curfew violators. The Court, notwithstanding the obvious fact that such ordinances did not involve the exercise of speech and expression, markedly passed upon the vagueness challenge, finding that the arguments of petitioners were unconvincing. Succinctly, the Court ruled that while the curfew ordinances did not venture to state any parameters law enforcement agents were still bound to follow the prescribed measures found under Republic Act No. 9344 in apprehending curfew violators.

Most importantly, the vagueness doctrine "is premised on due process considerations." As Justice Caguioa submits, this Court has often subjected laws or regulations that do not involve speech to the vagueness

challenge. (Emphasis supplied)

[29] *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*, 520 Phil. 457, 470 (2006) [Per Chico-Nazario, J. (First Division), Panganiban, C.J., Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concurred], citing *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000).

[30] *Ponencia*, pp. 11-12.

[31] *Republic v. Maria Basa*, *supra* note 6; *Belgica v. Executive Secretary*, *supra* note 6; *Inmates of the New Bilibid Prison v. De Lima*, *supra* note 6; *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, *supra* note 6; *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, *supra* note 6.

[32] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, *supra* note 6, at 1091.

[33] *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 123 (2014) [Per Mendoza, J. (En Banc), Velasco, Jr., Peralta, Bersamin, Villarama, Jr. and Perez, JJ., concurred. Sereno, C.J., Del Castillo, Reyes and Perlas-Bernabe, JJ., filed their separate concurring and dissenting opinions. Carpio, Abad, Leonardo-de Castro, Brion JJ., filed their concurring opinions. Leonen, J., filed his separate dissenting opinion].

[34] *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 2, 2019, 899 SCRA 412, 520. [Per Leonen, J. (En Banc), Bersamin, C.J., Carpio, Peralta, Del Castillo, Perlas-Bernabe, Caguioa, Reyes, A. B., Jr., Gesmundo, Carandang and Lazaro-Javier, JJ., concur. Jardeleza, J., no part and on official business. Reyes, J.C., Jr., J., on official leave. Hernando, J., on leave.]

[35] *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, *supra* note 6, at 481.

[36] *Supra* note 6.

[37] *Id.* at 53-54.

[38] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, *supra* note 6, at 1091.

[39] *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374>>. [Per Leonen, J. (En Banc), Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, M.V. Lopez, Delos Santos, Gaerlan, Rosario and J.Y. Lopez, JJ., concur.]

[40] *Supra* note 6.

[41] *Id.* at 484-486.

[42] *Inmates of the New Bilibid Prison v. De Lima*, *supra* note 6, at 650; See also *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, *supra* note 6, at 1091:

Applying these precepts, this Court finds that there exists an actual justiciable controversy in this case given the evident clash of the parties' legal claims, particularly on whether the Curfew Ordinances impair the minors' and parents' constitutional rights, and whether the Manila Ordinance goes against the provisions of RA 9344. Based on their asseverations, petitioners have — as will be gleaned from the substantive discussions below — conveyed a *prima facie* case of grave abuse of discretion, which perforce impels this Court to exercise its expanded jurisdiction. The case is likewise ripe for adjudication, considering that the Curfew Ordinances were being implemented until the Court issued the TRO enjoining their enforcement. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.

[43] *Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 107 (2000) [Per Panganiban, J. (En Banc), Davide, Jr., C.J., Bellosillo,

Melo, Puno, Vitug, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes and De Leon, Jr., JJ., concurred. Kapunan, J., see dissenting opinion. Purisima and Ynares-Santiago, JJ., join J. Kapunan in his dissenting opinion]:

This is a rather novel theory — that people should await the implementing evil to befall on them before they can question acts that are illegal or unconstitutional. Be it remembered that the real issue here is whether the Constitution and the law are contravened by Section 4 of AO 372, not whether they are violated by the acts implementing it. In the unanimous en banc case *Tañada v. Angara*, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. (Emphasis and underscoring supplied)

[44] *Spouses Imbong v. Ochoa, Jr.*, supra note 33, where the Court stated:

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The rule is that courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. The controversy must be justiciable — definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof, on the other; that is, it must concern a real, tangible and not merely a theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. (Emphasis supplied)

[45] *Republic v. Maria Basa*, supra note 6.

[46] N.B. For instance, a petition for prohibition is a preventive remedy to restraint doing of some act which is about to be done [*Agustin v. De la Fuente*, 84 Phil. 515, 517 (1949)]. It cannot restrain acts that are already accomplished [See *Montes v. Court of Appeals*, 523 Phil. 98, 109-110 (2006)]. Similarly, an action for injunction, which has for its purpose the enjoinder of a defendant from the commission or continuance of a specific act, would be dismissed if the act sought to be restrained has been accomplished or fully executed [See *Manila Banking Corp. v. Court of Appeals*, 265 Phil. 142, 151 (1990)]. Under these circumstances, the breach or the injury is merely imminent, and it would be incongruous for the Court to require further overt acts before ruling on the petition as by that time, the act sought to be enjoined is fait accompli.

[47] Titled "AN ACT EMPOWERING THE COURTS TO MAKE DECLARATORY JUDGMENTS, AND FOR OTHER PURPOSES," dated November 22, 1930.

[48] *Ollada v. Central Bank*, 115 Phil. 284, 291 (1962) cited in the Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Department of Health v. Philippine Tobacco Institute, Inc.*, G.R. No. 200431, July 31, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68029>>.

[49] Manuel V. Moran, *COMMENTS ON THE RULES OF COURTS*, Vol. II (1957 ed.), pp. 141-142.

[50] Ponencia, p. 1.

[51] N.B. Courts of First Instance were granted the authority to "make declaratory judgments" in Act No. 3736, Sec. 1 of which mirrors the language of Section 1, Rule 63 of the Rules of Court. This was later incorporated in the 1940 Rules of Court, where petitions for declaratory relief were subsumed under Rule 66, and later in Rule 64 under the 1964 Rules of Court. Notably, in *Macasiano v. National Housing Authority*, 296 Phil. 56, 64-65 (1993), the Court recognized that the original jurisdiction over an action for declaratory relief is with the Regional Trial

Court.

[52] RULES OF COURT, Rule 63, Sec. 3.

[53] RULES OF COURT, Rule 63, Sec. 4.

[54] 101 Phil. 328 (1957) [Per Felix, J. (Second Division), Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L. and Endencia, JJ., concurred]; See also *Imbong v. Ferrer*, 146 Phil. 30 (1970). [Per Makasiar, J. (Second Division), Reyes, J.B.L., and Castro, JJ., concurred. Concepcion, C.J., concurred with Mr. Justice Fernando as certified by Mr. Justice J.B.L. Reyes. Dizon, J., voted in favor of the opinion of Mr. Justice Makasiar as certified by Mr. Justice J.B.L. Reyes. Makalintal, J., concurred in the result. Zaldivar, J., concurred with the separate opinion of Mr. Justice Fernando in so far as it relates to Sec. 8(a), par. 1 of Republic Act No. 6132 and reserved his vote in so far as other questions raised in the two cases were concerned. Fernando, J., concurred and dissented in a separate opinion. Barredo, J., dissented in a separate opinion. Villamor, J., concurred with the separate opinion of Mr. Justice Fernando. Teehankee, J., was on official leave], where the Court gave due course to an action for declaratory relief, which assailed the constitutionality of the 1970 Constitutional Convention Act.

[55] *Id.* at 337-338.

[56] 718 Phil. 294 (2013) (Per Perlas-Bernabe, J. (En Banc), Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Del Castillo, Abad, Perez, Reyes and Leonen, JJ., concurred. Brion and Villarama, Jr., JJ., were on leave. Peralta, Bersamin and Mendoza, JJ., were on official leave].

[57] *Id.* at 304-305.

[58] 760 Phil. 519 (2015) [Per Velasco, Jr., J. (En Banc), Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, Reyes and Perlas-Bernabe, JJ., concurred; Leonen, J. on leave but filed Concurring Opinion; Peralta, J. on leave; Jardeleza, J. took no part]

[59] 620 Phil. 175 (2009) [Per Brion, J., (En Banc), Puno, C.J., Carpio, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Bersamin, Del Castillo, Abad and Villarama, Jr., JJ., concurred; Corona, Velasco, Jr. and Peralta, JJ., were on official leave.]

[60] Titled "AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991," AND FOR OTHER PURPOSES, or the Synchronized Barangay and SK Election," approved on March 19, 2002.

[61] 609 Phil. 201 (2009) [Per Brion, J. (En Banc), Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Peralta and Bersamin, JJ., concurred; Carpio Morales, J., was on leave.]

[62] *Id.* at 216-217.

[63] 763 Phil. 79 (2015) [Per Villarama, Jr., J. (Third Division), Peralta, Bersamin, Perez, and Perlas-Bernabe, JJ., concurred.]

[64] *Id.* at 92.

[65] G.R. No. 194461, January 7, 2020, 928 SCRA 110 [Per Leonen, J. (En Banc), Peralta, C.J., Caguioa, Gesmundo, Reyes, J.C. Jr., Hernando, Carandang, Lazaro-Javier, Inting and Zalameda, JJ., concurred; Perlas-Bernabe, J., was on official leave; Reyes, A.B. Jr., J. was on official business; Lopez, J., was on wellness

leave; Delos Santos, J., took no part.]

[66] Id. at 124.

[67] Republic v. Roque, supra note 56, at 304.

[68] 557 Phil. 121 (2007) [Per Carpio Morales, J. (En Banc), Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura and Reyes, JJ., concurred].

[69] Id. at 134.

[70] See Tolentino v. Board of Accountancy, 90 Phil. 83, 88 (1951), See also Manuel V. Moran, COMMENTS ON THE RULES OF COURT (Volume II), supra note 49.

[71] Republic v. Roque, supra note 56, at 305.

[72] MMDA v. Viron, supra note 73, at 135. Emphasis supplied.

[73] See Manuel V. Moran, COMMENTS ON THE RULES OF COURTS (Volume II), supra note 49, at 143-147.

[74] Rollo, pp. 81-82.

[75] RULES OF COURT, Rule 63, Sec. 1.

[76] Ponencia, p. 13.

[77] CONSTITUTION, Art. VIII, Sec. 5. Batas Pambansa, Blg. 129, Sec. 21(1).

[78] Gios-Samar Inc. v. Department of Transportation and Communications, supra note 14, at 131.

[79] Id. at 172-173, citing Diocese of Bacolod v. Commission on Elections, 751 Phil. 301 (2015). The "serious and important reasons" are as follows. (1) when there are genuine issues or constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) cases of first impression; (4) the constitutional issues raised are better decided by the Court; (5) exigency in certain situations; (6) the filed petition reviews the act of a constitutional organ; (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (8) the petition includes questions that are "dictated by public welfare and the advancement or public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

[80] Rollo, pp. 30-33.

[81] Ponencia, p. 15.

[82] DTI-DA-DOH-DENR Joint Administrative Order No. 1-93, RULES AND REGULATIONS IMPLEMENTING R.A. NO. 7581, dated February 15, 1993.

[83] In its Memorandum, DTI cites Webster's Third New International Dictionary to argue that:

Hence, the words constituting the phrase "grossly in excess of its true worth" should be understood in their ordinary meaning and in light of their usage in Section 5(2) of R.A. 7581. "Gross" means "glaringly noticeable, flagrant." "In excess" means "a state of surpassing or going beyond limits; the fact of being in a measure

beyond sufficiency, necessity or duty." "True" means "conformable to fact; in accordance with the actual state of affairs; not false or erroneous; not inaccurate" while 'worth' means 'having the value of; equal in value to; monetary value." (rollo, pp. 224-225)

[84] *Imbong v. Ochua, Jr.*, supra note 33, at 197.

[85] See *People v. Siton*, 616 Phil. 449 (2009).

[86] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 6, at 1095-1096.

[87] Ponencia, p. 15.

[88] Rollo, p. 62.

[89] *Id.* at 69.

[90] RA No. 7581, Sec. 15.

[91] *Inmates of the New Bilibid Prison v. De Lima*, supra note 6, at 619.

[92] 338 Phil. 546 (1997).

[93] *Id.* at 575.

CONCURRENCE AND DISSENT

LAZARO-JAVIER, J.:

On May 25, 2010, Director Dimagiba of the Bureau of Trade Regulation and Consumer Protection of the Department of Trade and Industry (DTI), wrote Universal Robina Corporation (URC) to ask why its ex-mill flour prices had not been reduced despite the decrease in certain cost factors.[1] URC responded that the difference in the price of their flour reflected the price movement of wheat in the world market and covered other costs of operation, which included increased labor costs. Director Dimagiba noted that the price of wheat in the international market comprised of 75% of flour production while the operating cost and power was approximately 5% of the production cost. He thus instructed URC to reduce its ex-mill prices from PHP790.00 per bag of flour to PHP630.00 to PHP680 per bag of flour.[2]

Later on, Director Dimagiba filed a Complaint against URC for profiteering before the DTI. The Complaint alleged that URC's flour price at PHP790.00 per bag constituted profiteering under Republic Act No. 7581, or the Price Act, for not representing the true worth of the flour per bag. He prayed that URC be fined and ordered to sell its flour from PHP630.00 to PHP680.00 per bag. The Complaint was dismissed because of the absence of a certification against forum shopping.[3]

Meanwhile, the DTI wrote URC, noticing that the company's ex-mill prices were higher than expected, and inviting it to meet regarding its prices. In response, URC filed a petition for declaratory relief before the trial court. It prayed, inter alia, that the provision in the Price Act prohibiting profiteering be declared invalid, as the Price Act failed to clearly define what profiteering was.[4] The trial court dismissed the petition because it found that no justiciable controversy existed and that the petition was prematurely filed.[5] Consequently, URC filed the present Petition for Review on Certiorari, on pure question of law.[6]

In the main, URC argues that there is an actual controversy here which calls for judicial review. It maintains that the dismissal of the profiteering case does not negate the existence of a conflict of legal rights. As the profiteering

case was dismissed due to a technicality, the legal controversy created by public respondents' acts was not resolved by any competent authority, and therefore, remains an actual controversy.[7]

Even if the case did become moot, URC argues that the Court should nonetheless resolve the case considering: (1) there is grave violation of the Constitution; (2) paramount public interest is involved; (3) the constitutional issue raised requires formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the matter is capable of repetition yet evading review, as the profiteering case was dismissed without prejudice to its refiling.[8]

The Majority Decision penned by the esteemed Senior Associate Justice Marvic Mario Victor F. Leonen granted the petition and declared Section 5 (2) of the Price Act, penalizing the act of profiteering, unconstitutional. It held, thus:

- When the constitutionality of a statute is raised through a petition for declaratory relief, the standard rules of justiciability apply. There is an actual case and controversy when there are actual facts to enable courts to intelligently adjudicate the issues. There is also an actual case and controversy when there is a clear and convincing showing of a contrariety of rights. For the exercise of judicial review, actual facts resulting from the assailed law, as applied, may not be absolutely necessary in all cases. A clear and convincing showing of a contrariety of rights may suffice.[9]

- As an exception to the requirement of actual facts, there are three instances when a facial review of the law is permissible. First, in cases involving freedom of expression and its cognates, a facial challenge of a law may be allowed. Second, judicial review is also proper, despite the absence of actual facts, when a violation of fundamental rights is involved—one so egregious or so imminent that judicial restraint would mean that such fundamental rights would be violated. Third, judicial review is proper despite the absence of actual facts when it involves a provision of the Constitution invoking emergency or urgent measures, and such review can potentially be mooted by the transitoriness of the emergency.[10]

- Therefore, declaratory relief as a remedy for constitutional challenge will succeed only when: (1) there is a clear and convincing contrariety of rights; or (2) in those instances when facial review is allowed. In this case, there is a clear and convincing showing that a contrariety of rights exists as between the DTI which maintain its authority to determine when profiteering has occurred, and URC, who maintains that the provision on profiteering is void for vagueness. Thus, notwithstanding the initial dismissal of the complaint filed against petitioner, there is still an actual case here. URC may not be currently charged for profiteering, but it was again invited to discuss its prices and to explain its ex-mill prices. This invitation shows that the intent of the DTI to hold the petitioner liable for profiteering under the Price Act.[11]

- This Court agrees with petitioner that the law forms an undue delegation of legislative powers as the concepts of "true worth" of a basic necessity and prime commodity, and "price grossly in excess" of that value, provide no standard for executive discretion. The phrase "price grossly in excess" is vague, because, as pointed out by petitioner, what is grossly excessive to one may be reasonable to another. The law therefore leaves open the question of whose standards should be used when determining whether a price is grossly excessive, and what an item's true worth is.[12]

- Although the purpose of the provision on profiteering is clear, and although individuals may have some ideas as to what might constitute profiteering, no guidelines or limitations are provided to determine the "true worth" of a given product, or what constitutes a price "grossly excessive" of that value. Thus, the Price Act failed to lay down a sufficient standard with regard to determining that profiteering has occurred. There is no abuse inherent to the provision. Nonetheless, because the law does not specify the limits of the implementing agency's authority in this

provision, it may allow arbitrariness, and does not "prevent the delegation from running riot". Accordingly, it fails the sufficient standard test.[13]

I have my reservations in the procedural aspect of the case and I respectfully disagree with the result.

Under Rule 63 of the Rules of Court, courts have the discretionary[14] power to hear petitions for declaratory relief, viz.:

Section 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

Section 5. Court action discretionary. — Except in actions falling under the second paragraph of section 1 of this Rule, 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.

The Majority Decision clarified that declaratory relief is a viable remedy to challenge the constitutionality of a law, provided that it meets the requisites of justiciability. Before delving into the constitutionality of a law, the following requisites must be met:

(1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[15]

In *In re Obiles*,[16] the Court elaborated on the meaning of a justiciable controversy, vis-à-vis petitions for declaratory relief, viz.: [17]

There is no allegation in the petition, however, that by reason of such registration any official of the Government has taken steps, or is intending to take steps or threatening to take steps, to hold the petitioner to any obligation, responsibility, or liability. As the petitioner himself candidly admits in his complaint, he is only afraid lest this registration might involve the loss of his Filipino citizenship. This supposed fear in the mind of the petitioner is not what the law considers as an actual controversy, or a justiciable controversy, which requires the intervention of the courts of justice in order that the rights, obligations, or liabilities arising therefrom may be predetermined. In effect, petitioner's allegations of fact in his petition are entitled to no more than an advisory opinion, because a ruling on the effect of the registration by petitioner involves no actual, genuine, live controversy affecting a definite legal relation. (Emphasis and underscoring supplied)

According to the facts, the government has, in this case, "taken steps, or is intending to take steps or threatening to take steps" to hold URC liable under the Price Act. Indeed, Director Dimagiba of the DTI "filed Complaints against the local flour millers [including URC] for profiteering before the Department of Trade and Industry." [18] Further, URC only filed the petition for declaratory relief in response [19] to the actions initiated by the DTI. Stated differently, although there is no actual case or controversy between URC and DTI in the traditional sense (i.e., there is no actual case before a court or tribunal), the definition in *In re Obiles* recognized that there actually is a contrariety of rights between them.

Although the complaint for profiteering before the DTI was dismissed, there remained a looming threat that URC

would be subjected to another action for profiteering under the Price Act. This action for profiteering is a separate cause of action—not barred by URC's petition for declaratory relief. Clearly, URC had a right which would have been affected by the DTI's enforcement of the Price Act. As such, URC filed its petition for declaratory relief at the most opportune time. Had it filed its petition only after an action for profiteering was instituted and resolved against it, then its petition would have been moot.[20] Therefore, URC's petition for declaratory relief—in the sense provided under Rule 63—was apropos.

This notwithstanding, declaratory relief was not the proper remedy to assail the constitutionality of the Price Act. *Araullo v. Pres. Aquino III*[21] clarified that petitions for certiorari and prohibition are the appropriate remedies to raise constitutional issues and/or prohibit or nullify the acts of legislative and executive officials.[22]

Although URC availed of a wrong initiatory remedy, the need to finally resolve the issues involved far outweighs the rigid application of the rules.[23] In several cases, the Court has allowed this accommodation to settle issues once and for all.[24] More so here, where the issues involved are of transcendental importance to the nation,[25] and relate to the price of basic and prime commodities that directly affect the lives of our citizenry.[26]

Thus, although I do not agree with the Majority Decision that the petition for declaratory relief is a proper remedy to challenge the constitutionality of the Price Act, the petition must still be given due course because it should be treated as a petition for certiorari and prohibition by reason of its transcendental importance.[27]

On the merits, however, I do not agree with the Majority Decision that the definition of profiteering in the Price Act is vague. In *Romualdez v. Sandiganbayan*,[28] the constitutionality of Section 5 of Republic Act No. 3019 was challenged for allegedly being vague and "impermissibly broad." Romualdez claimed that the term "intervene" was vague. The Court held that "the absence of a statutory definition of a term used in a statute will not render the law 'void for vagueness,' if the meaning can be determined through the judicial function of construction." [29]

Under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated.[30] Every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[31] In other words, when the law is unclear, it can be interpreted by going over its provisions and finding its meaning and effect.

Too, in *Estrada v. Sandiganbayan*,[32] we held:

[A] statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act."

Applying this dictum, although the terms "true worth" and "price grossly in excess" under Section 5(2) have not been expressly defined under the Price Act their meanings as intended by its legislators can easily be ascertained by resorting to the immediately succeeding sentences in the same provision which enumerate what constitute *prima facie* evidence of profiteering as when the product: "(a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of

its price in the immediately preceding month."

These instances are not conclusive as to the criminal liability of the sellers. The law allows them to overcome such presumption by explaining its price increases to the DTI. It cannot be said therefore that DTI has unbridled authority in determining whether a person or entity is liable for profiteering since the private sectors are given "avenues of communication" to justify its price increases.[33] More, it could not be held liable unless it has been notified and has had the opportunity to be heard. Thus, URC's right to due process would still be respected.

Respectfully submitted.

[1] Decision, p. 2.

[2] Id.

[3] Id. at 2-3.

[4] Id. at 3-4.

[5] Id. at 4.

[6] Id. at 5.

[7] Id.

[8] Id.

[9] Id. at 9-11.

[10] Id. at 1-12.

[11] Id. at 13.

[12] Id. at 14.

[13] Id. at 15-16.

[14] Zomer Development Company, Inc. v. Special Twentieth Division of the Court of Appeals, Cebu City and Union Bank of the Philippines, G.R. No. 194461, January 7, 2020.

[15] Decision, pp. 9-11.

[16] 92 Phil. 864, 867 (1953).

[17] Decision, p. 10.

[18] Id. at 2.

[19] Id. at 4.

[20] See Aquino v. Municipality of Malay, Aklan, et al., G.R. No. 211356, September 29, 2014.

[21] 737 Phil. 457, 531 (2014).

[22] Yaphockun, et al. v. Professional Regulation Commission, et al., G.R. No. 213314, March 23, 2021.

[23] Municipality of Tupi v. Faustino, 860 Phil. 363, 376 (2019) citing Department of Transportation, et al. v. Philippine Petroleum Sea Transport Association, et al., 837 Phil. 144, 165 (2018).

[24] In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations, G.R. No. 215801, January 15, 2020; Association of International Shipping Lines, Inc., et al. v. Secretary of Finance, et al., G.R. No. 222239, January 15, 2020; Municipality of Tupi v. Faustino, 860 Phil. 363, 376 (2019) citing Department of Transportation, et al. v. Philippine Petroleum Sea Transport Association, et al., 837 Phil. 144, 165 (2018).

[25] Decision, p. 11; Diocese of Bacolod v. COMELEC, 789 Phil. 197 (2015).

[26] Decision, pp. 20-21.

[27] See Municipality of Tupi v. Faustino, 860 Phil. 363 (2019).

[28] 479 Phil. 265 (2004).

[29] Id.

[30] Naga Plant v. Gomez, 591 Phil. 642, 659 (2008).

[31] Chavez v. JBC, 691 Phil. 173, 200-201 (2012).

[32] 421 Phil. 290, 347-348 (2001).

[33] Decision, p. 22.

CONCURRING AND DISSENTING OPINION

INTING, J.:

I concur with the majority that petitioner Universal Robina Corporation (Universal Robina) was able to show a contrariety of legal rights and therefore correctly availed of the remedy of a Petition for Declaratory Relief under Rule 63 of the Rules of Court to challenge the constitutionality or validity of Republic Act No. (RA No.) 7581 (Price Act), Executive Order No. 913 (EO 913), and Department of Trade and Industry (DTI) Administrative Order (AO) No. 7.[1]

However, I disagree with the majority in holding that Section 5(2) of the Price Act is not void on the ground of vagueness.[2] To my mind, the crime of "profiteering" under the Price Act is void for being vague and violative of due process.

1.A.

A petition for declaratory relief is a correct remedy to challenge the constitutionality or validity of a law, regulation, or ordinance before there has been a breach thereof

Section 1, Rule 63 of the Rules of Court provides that "a party, whose rights are affected by a statute, executive order or 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". Evidently, the rules itself allow the filing of a petition for declaratory relief to assail the constitutionality or validity of laws.

The purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract, for their guidance in its enforcement or compliance and not to

settle issues arising from its alleged breach.[3] It gives a practical remedy for ending controversies that have not reached a state where another relief is immediately available, and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.[4]

Thus, the Court has repeatedly ruled on the requisites for a petition for declaratory relief to prosper, even when there has been no breach of the challenged law, viz: (1) there must be a justiciable controversy between persons whose interests are adverse; (2) the party seeking the relief has a legal interest in the controversy; and (3) the issue is ripe for judicial determination. Moreover, (4) there must be no breach of the document in question.[5]

In *Republic v. Roque*[6] (*Roque*), the Court clarified when there is a justiciable controversy or the "ripening of seeds" of one between persons whose interests are adverse:

As to the fourth requisite, there is serious doubt that an actual justiciable controversy or the 'ripening seeds' of one exists in this case.

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 describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.[7] (*Italics supplied*)

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a mere hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced based on existing law and jurisprudence.[8]

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*[9] (*Southern Hemisphere*) the Court held that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge, qualified by the requirement that there must be sufficient facts to enable the courts to intelligently adjudicate the issues.

The foregoing definition of "justiciable controversy" or "ripening of seeds" is consistent with the Court's prior rulings allowing petitions for declaratory relief to challenge the constitutionality of a law, executive order, or regulation, before there has been a breach or violation thereof. In *Commissioner of Customs v. Hypermix Feeds Corporation*,^[10] *Province of Camarines Sur v. Court of Appeals*,^[11] and *Government Services Insurance System v. Daymiel*,^[12] the petitions for declaratory relief therein were allowed to assail the constitutionality or validity of laws and regulations because the challenging parties were able to present facts establishing that litigation was inevitable. Likewise, in *Didipio Earth-Savers' Multi-Purpose Association v. Gozun*^[13] (*Didipio*), the Court found proper the petition for declaratory relief assailing a regulation even without any overt act against therein petitioners as the latter were under imminent threat and imperiled of being displaced from their homes by reason of the regulation involving mining rights.

Similarly, in *Inmates of the New Bilibid Prison v. de Lima*^[14] (*Inmates of the New Bilibid Prison*), the petition for declaratory relief was allowed against a regulation on the prospective application of a law covering the time credits of inmates, even though therein petitioners- inmates had not yet applied for time credits and there was no prior refusal on the part of the Government to give them time credits. The Court found that therein petitioners were "languishing in jail" and with their continued incarceration, "any delay in resolving the case would cause them great prejudice." Further, any application for time credits would have been an exercise in futility because therein respondents were insisting on the prospective application of the law which would necessarily exclude

therein petitioners from time credits.

1.B.

Decisions holding that a petition for declaratory relief is an improper remedy as it is filed before there has been a breach or violation of the assailed law, regulation, or executive order have to be abandoned.

I am aware of several decisions[15] of the Court holding that a petition for declaratory relief is not a proper vehicle to invoke judicial review powers to declare a statute unconstitutional, which is based on the finding that such petition does not raise an actual case, being filed before there has been a breach or violation of the challenged statute. These decisions find their genesis in *DOTR v. Philippine Petroleum Sea Transport Association*[16] (PPSTA), which held:

Thus, 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.[17]

It appears, however, that the propriety of a Rule 63 petition for declaratory relief to challenge the constitutionality of a statute was not even raised as an issue in PPSTA. Instead, therein petitioner merely argued that "respondents' petition for declaratory relief questioned the wisdom behind them and was, thus, beyond the lower court's jurisdiction." [18] The argument thus delves on the issue of political question, not the existence of an actual case or controversy.

Moreover, PPSTA is more in line with *Pimentel v. Aguirre*[19] where the Court exercised its judicial powers because there were serious allegations of violations of the Constitution, particularly the prohibition against rider clauses and undue delegation of legislative powers, among others.

With the foregoing, I agree with the majority in recognizing a Rule 63 petition for declaratory relief as a viable remedy to assail the constitutionality or validity of a law or regulation, so long as the petitioner shows a justiciable controversy or a contrariety of legal rights that can be interpreted and enforced based on existing law and jurisprudence. The Court's prior rulings holding otherwise must be abandoned.

1.C.

A petition for declaratory relief against a statute with a penal clause may prosper when prosecution has been threatened by the government even though there are no pending charges for its supposed violation.

As regards the existence of an actual controversy in petitions for declaratory relief against statutes with a penal clause, the Court in *Southern Hemisphere*, [20] citing the United States (US) Supreme Court decision in *Holder v. Humanitarian Law Project*, [21] recognized a pre-enforcement review of a criminal statute, challenged on vagueness grounds, since the plaintiffs faced "a credible threat of prosecution" and "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief". To determine the existence of an actual controversy, the Court further relied on prevailing American Jurisprudence, which allows an adjudication on the merits where an anticipatory petition clearly shows that the challenged prohibition forbids the conduct or activity that a petitioner seeks to do. [22]

Indeed, American Jurisprudence recognizes that in actions for declaratory relief against statutes with a penal clause, the existence of an actual controversy is required. [23] The mere existence of a penal statute would constitute insufficient grounds to support a court's adjudication of its constitutionality in proceedings brought against the State's prosecuting officials if real threat of enforcement is wanting. [24]

However, a pending criminal complaint nor a prior arrest of the plaintiff is not required; actions for declaratory

relief may be allowed when a prosecution based upon an assertedly unconstitutional statute has been threatened but is not pending.[25]

Thus, an action for declaratory relief is dismissible if a plaintiff merely avers a general statement that the State's prosecuting officials "stood ready to perform their duties under their oath of office should they acquire knowledge of violations", but without any actual threats to prosecute the plaintiff in connection with any specific provision of the challenged statute.[26] When the complaint fails to mention any specific threat by any officer or official of the government to arrest or prosecute the plaintiff under the challenged statute, the action for declaratory relief should be dismissed for failure to present a justiciable controversy.[27]

1.D.

Universal Robina was able to establish that there is a case or controversy, warranting the Court's exercise of judicial power.

I agree with the majority's finding[28] that Universal Robina was able to show sufficient facts establishing the existence of an actual case or controversy that would warrant judicial action.[29]

Universal Robina has established that the DTI and its Bureau of Trade Regulation and Consumer Protection (BTRCP), through its Director and herein respondent Victorio Mario A. Dimagiba (Dimagiba), has threatened the enforcement of Section 5(2) of the Price Act on Profiteering. As averred by Universal Robina, it received from Dimagiba a letter dated May 25, 2010 regarding Universal Robina's flour prices covering the period of January to May 2007 and January to May 2010, asking why the ex-mill flour prices of Universal Robina had not been reduced despite the decrease of certain cost factors, followed by Universal Robina's response thereto. Thereafter, Dimagiba wrote a reply-letter refuting Universal Robina's comments and instructing the latter to reduce its prices. Subsequently, Dimagiba prepared the formal charge for profiteering and filed the same with the DTI, which, in turn, issued a Preliminary Order. The formal charge, however, was dismissed for lack of a certification against forum-shopping, while the Preliminary Order was lifted after Universal Robina and other flour millers complied with the same.

A few months later, Universal Robina received another letter, this time from the DTI, likewise asking about its ex-mill prices, which appeared to be higher than expected. Notably, the DTI's letter expressly refers to the price evaluation of the BTRCP and directed Universal Robina to comment on such evaluation, warranting the conclusion that a similar finding of Profiteering by the DTI against Universal Robina was highly likely.

The foregoing factual circumstances sufficiently show that the DTI has threatened the enforcement of Section 5(2) of the Price Act against Universal Robina. A formal charge for Profiteering has, in fact, been filed against Universal Robina. Further, the sale of Universal Robina's products at the prices it set is precisely the conduct being prohibited by Section 5(2) of the Price Act.

Thus, Universal Robina's Petition for Declaratory Relief presents an actual controversy, as it demonstrates a contrariety of rights and the facts presented are sufficient for the Court to intelligently adjudicate the conflicting claims of the parties. On one hand, Universal Robina asserts its right to sell its products at the prices it deems fit. Relevantly, in *Balacuit v. Court of First Instance of Agusan del Norte*,[30] we recognized that the right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself and, as such, within the protection of the due process clause.

On the other, the BTRCP submits that the prices are "grossly in excess" of the products' "true worth", in violation of Section 5(2) of the Price Act. To this end, the Court has recognized price control laws regulating the realization of profits as a valid exercise of police power.[31] The Court explained that the Philippines has never been a

laissez faire State,[32] a principle that has never been fully accepted as a controlling economic way of life and must even give way to the interest of the State to provide a decent living to its citizens.[33]

Evidently, similar to *Steffel v. Thompson*,[34] Universal Robina finds itself hapless between the Scylla of intentionally flouting state law and the Charybdis of foregoing what it believes to be constitutionally protected activity in order to avoid becoming enmeshed in a criminal proceeding.

The foregoing conflicting assertion of rights warrants judicial action, as correctly held by the majority.

2. Section 5(2) of the Price Act is vague.

Nevertheless, the majority holds that the provisions of the Price Act on the crime of profiteering is not vague.[35]

With due respect to my esteemed colleagues, I dissent.

A statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." [36] It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[37]

In *Southern Hemisphere*,[38] the Court clarified that in this jurisdiction, the void-for-vagueness doctrine is applied under the due process clause in examining the constitutionality of a criminal statute:

Since a penal statute may only be assailed for being vague as applied to petitioners, a limited vagueness analysis of the definition of 'terrorism' in RA 9372 is legally impermissible absent an actual or imminent charge against them

While *Estrada* did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder Law as applied to the therein petitioner, finding, however, that there was no basis to review the law 'on its face and in its entirety.' It stressed that 'statutes found vague as a matter of due process typically are invalidated only 'as applied' to a particular defendant.'

American jurisprudence instructs that 'vagueness challenges that do not involve the First Amendment must be examined in light of the specific facts of the case at hand and not with regard to the statute's facial validity.'

For more than 125 years, the US Supreme Court has evaluated defendants' claims that criminal statutes are unconstitutionally vague, developing a doctrine hailed as 'among the most important guarantees of liberty under law.'

In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the constitutionality of criminal statutes. In at least three cases, the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132 (b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two *Romualdez* and *Estrada* cases, were actually charged with the therein assailed penal statute, unlike in the present case.[39] (Emphasis supplied; underscoring and citations omitted)

Thus, using the vagueness standard, the Court has struck down government issuances as null and void for being vague.

In *Primicias v. Municipality of Urdaneta, Pangasinan*[40] (*Primicias*), the Court upheld the trial court's finding that a municipal ordinance, which imposed speed limits for vehicular traffic along certain roads, is null and void as it was not clear and definite on its terms. Being a regulatory issuance that imposes criminal liabilities, the

ordinance's clearness, definiteness, and certainty are even more important so that an average person should be able to, with due care, after reading it, understand and ascertain whether s/he will incur a penalty for particular acts or courses of conduct. In the case, the ordinance was found vague as it did not define "vehicular traffic":

The main issue in this appeal is the validity of Ordinance No. 3, Series of 1964, enacted on March 13, 1964 by the Municipal Council of Urdaneta, Pangasinan, which was declared null and void by the Court of First Instance of Lingayen, Pangasinan, in its decision dated June 29, 1966, the dispositive portion of which reads as follows:

x x x x

The ordinance in question provides:

"SECTION 1 - That the following speed limits for vehicular traffic along the National Highway and the Provincial Roads within the territorial limits of Urdaneta shall be as follows:

- Thru crowded streets approaching intersections at blind corners, passing school zones or thickly populated areas, duly marked with sign posts, the maximum speed limit allowable shall be 20 kph.

"SECTION 2 - That any person or persons caught driving any motor vehicle violating the provisions of this ordinance shall be fined P10.00 for the first offense; P20.00 for the second offense; and P30.00 for the third and succeeding offenses, the Municipal Judge shall recommend the cancellation of the license of the offender to the Motor Vehicle's Office (MVO); or failure to pay the fine imposed, he shall suffer a subsidiary imprisonment in accordance with law."

x x x x

Regarding the contention that the lower court erred in holding that said "Ordinance is not clear and definite in its terms." We agree with the Court a quo that when the Municipal Council of Urdaneta used the phrase "vehicular traffic" (Section 1, Ordinance) it "did not distinguish between passenger cars and motor vehicles and motor trucks and buses." This conclusion is bolstered by the fact that nowhere in the Ordinance is "vehicular traffic" defined. Considering that this is a regulatory ordinance, its clearness, definiteness and certainty are all the more important so that "an average man should be able with due care, after reading it, to understand and ascertain whether he will incur a penalty for particular acts or courses of conduct." In comparison, Section 35(b), Republic Act No. 4136 on which Section 1 of the Ordinance must be based, stated that the rates of speed enumerated therein refer to motor vehicle, specifying the speed for each kind of vehicle. At the same time, to avoid vagueness, Art. 11, Section 3 defines what a motor vehicle is and passenger automobiles are.

x x x x

The local statute or ordinance at bar being invalid, the exception just cited obtains in this case. Hence, the lower court did not err in issuing the writ of injunction against defendants.[41] x x x (Emphasis supplied)

Similarly, in *Genuino v. De Lima*,[42] the Court declared invalid the Department of Justice (DOJ) Circular No. 41 on the issuance of Hold Departure Orders (HDO) by the DOJ. An apparent vagueness was found in the DOJ issuance as it failed to provide standards on when an HDO or Watchlist Order may be issued by the DOJ, which rendered it invalid, viz.:

Apart from lack of legal basis, DOJ Circular No. 41 also suffers from other serious infirmities that render it invalid. The apparent vagueness of the circular as to the distinction between a HDO and WLO is violative of the due process clause. An act that is vague 'violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid and leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.' Here, the distinction is

significant as it will inform the respondents of the grounds, effects and the measures they may take to contest the issuance against them. Verily, there must be a standard by which a HDO or WLO may be issued, particularly against those whose cases are still under preliminary investigation, since at that stage there is yet no criminal information against them which could have warranted the restraint.[43]

In determining whether a statute is vague, the Court has held that there is "nothing vague about a penal law that adequately answers the basic query 'What is the violation?'"[44] The "context of the words that accompany" the assailed law is considered and the whereas clauses thereof are also referred to in order to resolve the issue of vagueness.[45]

In the present case, Universal Robina alleges that Section 5(2) of the Price Act on the crime of profiteering is vague. The said provision of law states:

Sec. 5. Illegal Acts of Price Manipulation. - Without prejudice to the provisions of existing laws on goods not covered by this Act, it shall be unlawful for any person habitually engaged in the production, manufacture, importation, storage, transport, distribution, sale or other methods of disposition of goods to engage in the following acts of price manipulation of the price of any basic necessity or prime commodity:

x x x x

(2) Profiteering, which is the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth. There shall be prima facie evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: Provided, That, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this Act and as determined by the implementing agency, the prima facie provisions shall not apply[.]

The majority found Universal Robina's contention to be unwarranted. Supposedly, Section 5(2) of the Price Act is not vague because the purpose behind the law is stated therein and it provides prima facie evidence on profiteering, including a 10% increase of prices from the immediately preceding month.[46] Supposedly, this "provides some anchor for assessing whether profiteering has occurred, though that determination is inconclusive." [47]

I respectfully disagree with the majority.

The DTI itself refuted the application of the 10% price increase threshold as an "anchor" to define profiteering. Particularly, in the Joint Administrative Order No. 03-06 dated on September 30, 2006 (Joint AO No. 03-06), then Secretary of the DTI, together with the secretaries of the Department of Agriculture, Department of Health, and Department of Environment and Natural Resources, stated that "to anchor the definition of a 'price grossly in excess of its true worth' on ten percent (10%) benchmark is to circumvent the prohibitory provisions of RA No. 7581 on profiteering". According to the DTI, "profiteering may be committed in circumstances where there are no price increases yet evidence may be proven that a commodity 'price is grossly in excess of its true worth.'"

Evidently, the DTI is not using the 10% price increase threshold as basis to define when profiteering is committed because a product's price may still exceed its true worth despite the absence of price increase. In fact, the letter exchange between Universal Robina and the DTI reveals that the charges of profiteering against the flour millers were not due to any price increase at 10% or more of the preceding month. Instead, profiteering was determined by Dimagiba because the flour millers' prices exceeded international market prices. While the flour millers attempted to explain the price difference to costs of operation, Dimagiba disagreed, arguing that the operational

costs cited by the flour millers make up only 5% of production cost. Despite his responses, the standards used by Dimagiba to determine that the flour millers' prices are "grossly in excess" of the products' "true worth" remain elusive.

In truth, the DTI's interpretation of the Price Act in Joint AO No. 03-06 is correct because the statute, as worded, merely identifies the 10% price increase as *prima facie* evidence of profiteering. It does not limit the crime to such situation. But the DTI's position begs the question: when is the price of a product grossly in excess of its true worth?

Contrary to the majority's opinion, I submit that the Price Act, even if read in consonance with the policy behind the law and its other provisions, does not define the crime of profiteering sufficiently. The Price Act leaves persons covered by it guessing as to what conduct is prohibited and what is not, and it grants the DTI unbridled discretion to carry out the prohibition against profiteering.

I am guided by the decision of the US Supreme Court in *US v. L. Cohen Grocery Co.*[48] (Cohen), where a constitutional challenge was mounted against Section 4 of the Food Control Act, which attached a penalty of fine or imprisonment to the making by any person of "any unjust or unreasonable rate or charge in handling or dealing in or with any necessities." The law was construed as forbidding and penalizing the exaction of an excessive price upon the sale of a commodity. In Cohen, the US Supreme Court struck down the law for being vague and therefore violative of due process. It determined that the law "forbids no specific or definite act" and is devoid of elements of the criminal act. It leaves open the widest conceivable inquiry, the scope of which no one can foresee, and to attempt to enforce the law is equivalent to an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court:

The sole remaining inquiry, therefore, is the certainty or uncertainty of the text in question — that is, whether the words

"that it is hereby made unlawful for any person willfully . . . to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessities"

constituted a fixing by Congress of an ascertainable standard of guilt, and are adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. That they are not, we are of opinion, so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary. Observe that the section forbids no specific or definite act. It confines the subject matter of the investigation which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against. In fact, we see no reason to doubt the soundness of the observation of the court below in its opinion to the effect that to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury. And that this is not a mere abstraction finds abundant demonstration in the cases now before us, since, in the briefs in these cases, the conflicting results which have arisen from the painstaking attempts of enlightened judges in seeking to carry out the statute in cases brought before them are vividly portrayed. As illustrative of this situation, we append in the margin a statement from one of the briefs on the subject. And again, this condition would be additionally obvious if we stopped to recur to the persistent efforts which, the records disclose, were made by administrative officers, doubtless inspired by a zealous effort to discharge their duty, to establish a standard of their own to be used as a basis to render the section possible of execution.

That it results from the consideration which we have stated that the section before us was void for repugnancy to the Constitution is not open to question. x x x

American Jurisprudence has likewise struck down a statute with a penal clause which provides that "not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, prison guards, janitors in public institutions, or other persons so employed by or on behalf of the state" because the terms "current rate" and "locality" were not defined. As amply explained by the US Supreme Court in *Connally v. General Construction Co.*[49] (*Connally*), the statute was so vague that the application of the law depends not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries:

We are of opinion that this provision presents a double uncertainty, fatal to its validity as a criminal statute. In the first place, the words "current rate of wages" do not denote a specific or definite sum, but minimum, maximum, and intermediate amounts, indeterminately, varying from time to time and dependent upon the class and kind of work done, the efficiency of the workmen, etc., as the bill alleges is the case in respect of the territory surrounding the bridges under construction. The statutory phrase reasonably cannot be confined to any of these amounts, since it imports each and all of them. The "current rate of wages" is not simple, but progressive -- from so much (the minimum) to so much (the maximum), including all between; and to direct the payment of an amount which shall not be less than one of several different amounts, without saying which, is to leave the question of what is meant incapable of any definite answer.

Nor can the question be solved by resort to the established canons of construction that enable a court to look through awkward or clumsy expression, or language wanting in precision, to the intent of the Legislature. For the vice of the statute here lies in the impossibility of ascertaining, by any reasonable test, that the legislature meant one thing, rather than another, and in the futility of an attempt to apply a requirement which assumes the existence of a rate of wages single in amount to a rate in fact composed of a multitude of gradations. To construe the phrase "current rate of wages" as meaning either the lowest rate or the highest rate, or any intermediate rate, or, if it were possible to determine the various factors to be considered, an average of all rates, would be as likely to defeat the purpose of the legislature as to promote it.

In the second place, additional obscurity is imparted to the statute by the use of the qualifying word "locality." Who can say with any degree of accuracy what areas constitute the locality where a given piece of work is being done? Two men, moving in any direction from the place of operations, would not be at all likely to agree upon the point where they had passed the boundary which separated the locality of that work from the next locality. It is said that this question is settled for us by the decision of the state Supreme Court on rehearing in *State v. Tibbetts*, 205 P. 776, 779. But all the court did there was to define the word "locality" as meaning "place," "near the place," "vicinity," or "neighborhood." Accepting this as correct, as of course we do, the result is not to remove the obscurity, but rather to offer a choice of uncertainties. The word "neighborhood" is quite as susceptible of variation as the word "locality." Both terms are elastic and, dependent upon circumstances, may be equally satisfied by areas measured by rods or by miles. See *Schmidt v. Kansas City Distilling Co.*, 90 Mo. 284, 296; *Woods v. Cochrane and Smith*, 38 Iowa 484, 485; *State ex rel. Christie v. Meek*, 26 Wash. 405, 407-408; *Millville Imp. Co. v. Pitman, etc., Gas Co.*, 75 N.J. Law, 410, 412; *Thomas v. Marshfield*, 10 Pick. 364, 367. The case last cited held that a grant of common to the inhabitants of a certain neighborhood was void because the term "neighborhood" was not sufficiently certain to identify the grantees. In other connections or under other conditions, the term "locality" might be definite enough, but not so in a statute, such as that under review, imposing criminal penalties. Certainly, the expression "near the place" leaves much to be desired in the way of a delimitation of boundaries, for it at once provokes the inquiry, "how near?" And this element of uncertainty cannot here be put aside as of no consequence, for, as the rate of wages may vary -- as, in the present case, it is alleged it does vary -- among different employers and according to the relative efficiency of the workmen, so it may vary in different sections. The result is that the application of the law depends not upon a word of fixed meaning in itself or one made definite by statutory or judicial definition,

or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries as to whether given areas are or are not to be included within particular localities. The constitutional guaranty of due process cannot be allowed to rest upon a support so equivocal. (Citations omitted; emphasis supplied)

Connally cites another case^[50] where a statute prohibiting the crowding of railway cars was deemed vague, because what may be regarded as "crowded" by one person may not be so considered by another. This important element of the crime cannot be left to conjecture or supplied by the court, for a crime and the elements constituting it must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue:

The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another.

It is my position that the vague statutes in *Cohen* and *Connally* are similar to the assailed provision of the Price Act. Indeed, Section 5(2) of the Price Act does not define the terms "true worth" and "grossly in excess."

Admittedly, the "true worth" of a product may be determined in reference to the statute's declared policy,^[51] i.e., "to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate business a fair return on investment."^[52] Corollary thereto, the Court understood "return on investment" as one that relates basically to net profits.^[53] Meanwhile, "profits" was defined as "the advance in the price of goods sold beyond the cost of purchase"; "the gain made by the sale of produce or manufactures, after deducting the value of the labor, materials, rents, and all expenses, together with the interest of the capital employed"; "excess of receipts over expenditures."^[54] The "true worth" of a product may be determined based on these factors, i.e., gross revenues less costs of goods sold, labor, materials, rents, and other expenses.

What may be a fair and reasonable price has also been related to the standards of just compensation under the taking clause of the Constitution.^[55] Thus, a product's "true worth" may refer to the "sum equivalent of the market value of the property, broadly described as the price fixed in open market by the seller in the usual and ordinary course of legal action or competition, or the fair value of the property as between one who receives and who desires to sell it."^[56]

To my mind, the vagueness of the Price Act is rooted in its failure to define when a price is deemed "grossly in excess" of a product's true worth.

I disagree with the majority that the meaning of "profiteering" may be gleaned from the context of the words and phrases that accompany the law, which provides circumstances when there could be prima facie evidence thereof, i.e., whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month.

Verily, the foregoing merely provides circumstances when there may be prima facie evidence of profiteering. As is, they do not define or set parameters when a price may be considered "grossly in excess" of a product's "true worth". A seller may sell his product with a price increase of less than 10% from its prices in the preceding month yet still be liable for profiteering. Further, as pointed out by the DTI in Joint AO No. 03-06, profiteering may be

committed even when there has been no price increase.

Like in *Connally*, the Price Act does not provide a clear dividing line between the selling of products at a price that is lawful and a price that is unlawful. Verily, the term "grossly in excess" is not simple, but progressive -- from so much (at a minimum profit margin of 1% of the seller's costs) to so much (at a margin of more than 10% of the prices in the preceding month), including all between, yet all prices could conceivably fall under "profiteering." The law leaves the DTI with a roving commission to determine the exact threshold when the prices of a product are already "grossly in excess" of their true worth.

Thus, as written, the persons covered by the Price Act must necessarily guess at which profit margin, at any given point in time, will be considered acceptable by the DTI. They may sell their products at a profit margin of 1% of their costs, or not even impose any price increase at all, yet in both situations, they may still be deemed to be engaged in profiteering by the DTI. In fact, as earlier pointed out, the DTI does not even use the 10% price increase threshold as the baseline to determine when a price is deemed "grossly in excess" of a product's "true worth". This is precisely the reason why a vague penal statute cannot stand the test of constitutionality – the Price Act violates the due process clause by leaving persons covered by it guessing as to what conduct is prohibited and what is allowed, and it grants the DTI unbridled discretion to prosecute its subjects for profiteering.

The purpose of the law may be noble, but when it criminalizes acts, the due process clause must still be observed. If the government seeks to ensure the availability of basic necessities and enforce price controls, Sections 7 and 8 of the Price Act provide a remedy: the imposition of price ceilings in certain situations provided by law.

In fine, the prosecution of acts under Section 5(2) of the Price Act depends entirely on the judgment of the DTI as to when a price is deemed "grossly in excess" of a product's "true worth". The law also deprives the persons covered by it of fair notice as to when its selling price for its products is already "grossly in excess" of their true worth. Certainly, similar to *Cohen*, an attempt to enforce Section 5(2) of the Price Act is equivalent to an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the DTI whenever it deems fit, in violation of the due process rights of the persons covered by it.

Perforce, Section 5(2) of Republic Act No. 7581 or the "Price Act" should be declared UNCONSTITUTIONAL for being vague and violative of the due process clause.

[1] Decision, p. 13.

[2] *Id.* at 15-16.

[3] *Hon. Quisumbing v. Gov. Garcia*, 593 Phil. 655, 674 (2008), citing *Martelino v. National Home Mortgage Finance Corporation*, 579 Phil. 45 (2008). See also *Tambunting, Jr. v. Sps. Sumabat*, 507 SCRA 94 (2005).

[4] *Manila Electric Company v. Phil. Consumers Foundation, Inc.*, 425 Phil. 65, 82 (2002); *Malana v. Tappa*, 616 Phil. 177, 188-189 (2009).

[5] *Province of Camarines Sur v. Court of Appeals*, 616 Phil. 541, 556-557 (2009); *Jumamil v. Cafe*, 507 Phil. 455 (2005); *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004.

[6] 718 Phil. 294 (2013).

[7] *Id.* at 305.

[8] *Corales v. Republic*, 716 Phil. 432, 451 (2013); *Sps. Arevalo v. Planters Development Bank*, 686 Phil. 236

(2012).

[9] 646 Phil. 452 (2010).

[10] 680 Phil. 681 (2012).

[11] Supra note 5.

[12] 848 Phil. 782 (2019).

[13] 520 Phil. 457 (2006).

[14] 854 Phil. 675 (2019).

[15] Association of International Shipping Lines, Inc. v. Secretary of Finance, G.R. No. 222239, January 15, 2020; In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012, G.R. No. 215801, January 15, 2020.

[16] 837 Phil. 144 (2018).

[17] Id. at 164.

[18] Id. at 162.

[19] 391 Phil. 84 (2000).

[20] 646 Phil. 452 (2010).

[21] 561 U.S. [unpaginated] (2010).

[22] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 9, at 482, citing Doe v. Bolton, 410 U.S. 179, 188-189 (1973).

[23] Evers v. Dwyer, 358 U.S. 202, 203-204 (1958).

[24] Poe v. Ullman, 367 U.S. 497, 507-508 (1961).

[25] Evers v. Dwyer, supra; Steffel v. Thompson, 415 U.S. 452, 457-458, 460-473 (1974).

[26] Watsons v. Buck, 313 U.S. 387, 400-401 (1941).

[27] Boyle v. Landry, 401 U.S. 77, 80-81 (1971).

[28] Supra note 1.

[29] See in contrast, Corales v. Republic, supra note 8. In the case, the petition for declaratory relief was dismissed for lack of justiciable controversy because the petitioner therein was seeking to enjoin the Commission on Audit (COA) from disallowing certain expenditures, even though the COA has not yet issued a Notice of Disallowance. Instead, the COA has issued only an Audit Observation Memorandum, which was merely initiatory and may still be subject to the comments from therein petitioner. The Court held that there was no justiciable controversy, as the COA could very well consider petitioner's comments and resolve not to disallow the questioned expenditures. At such initial step of the process, it was purely conjectural for petitioner to state that the COA was going to disallow such expenditures.

[30] 246 Phil. 189 (1988).

[31] Southern Luzon Drug Corporation v. The Department of Social Welfare and Development, 809 Phil. 315

(2017).

[32] *Heirs of Ardon v. Reyes*, 210 Phil. 187 (1983).

[33] *Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393 (1988).

[34] 415 U.S. 452 (1974).

[35] Decision, pp. 15-16.

[36] *People v. Nazario*, 247-A Phil. 276, 286 (1988). See also *People v. Dela Piedra*, 403 Phil. 31 (2001); *Representative Lagman v. Hon. Medialdea*, 812 Phil. 179 (2017).

[37] *Id.*

[38] *Supra* note 9.

[39] *Id.* at 492.

[40] 182 Phil. 42 (1979).

[41] *Id.* at 43-50.

[42] 829 Phil. 691 (2018).

[43] *Id.* at 734-735.

[44] *Romualdez v. Hon. Sandiganbayan*, 479 Phil. 265, 286 (2008).

[45] *Rep. Lagman v. Exec. Sec. Medialdea*, 822 Phil. 181 (2017).

[46] Decision, p. 16.

[47] *Id.*

[48] 255 U.S. 81 (1921).

[49] 269 U.S. 385, 393-396 (1926).

[50] Citing *United States v. Capital Traction Co.*, 34 App.D.C. 592.

[51] See *Del Mar v. Philippine Amusement and Gaming Corporation*, 400 Phil. 307 (2000).

[52] Price Act, Section 2.

[53] *Sime Darby Pilipinas, Inc. v. Magsalin*, 259 Phil. 658 (1989).

[54] *United States Employees Association Employees Association v. United States Employees Association*, 194 Phil. 80 (1981).

[55] *Levy Leasing Co., Inc. v. Siegel*, 258 U.S. 242 (1922).

[56] *Rebadulla v. Republic*, 824 Phil. 982, 995 (2018).

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