732 Phil. 1

EN BANC

[G.R. No. 204819, April 08, 2014]

JAMES M. IMBONG AND LOVELY-ANN C. IMBONG, FOR THEMSELVES AND IN BEHALF OF THEIR MINOR CHILDREN, LUCIA CARLOS IMBONG AND BERNADETTE CARLOS IMBONG AND MAGNIFICAT CHILD DEVELOPMENT CENTER, INC., PETITIONERS, VS. HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY, HON. FLORENCIO B. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT, HON. ENRIQUE T. ONA, SECRETARY, DEPARTMENT OF HEALTH, HON. ARMIN A. LUISTRO, SECRETARY, DEPARTMENT OF EDUCATION, CULTURE AND SPORTS AND HON. MANUEL A. ROXAS II, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

[G.R. NO. 204934]

ALLIANCE FOR THE FAMILY FOUNDATION PHILIPPINES, INC. [ALFI], REPRESENTED BY ITS PRESIDENT, MARIA CONCEPCION S. NOCHE, SPOUSES REYNALDO S. LUISTRO & ROSIE B. LUISTRO, JOSE S. SANDEJAS & ELENITA S.A. SANDEJAS, ARTURO M. GORREZ & MARIETTA C. GORREZ, SALVADOR S. MANTE, JR. & HAZELEEN L. MANTE, ROLANDO M. BAUTISTA & MARIA FELISA S. BAUTISTA, DESIDERIO RACHO & TRAQUILINA RACHO, FERNAND ANTONIO A. TANSINGCO & CAROL ANNE C. TANSINGCO FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN, THERESE ANTONETTE C. TANSINGCO, LORENZO JOSE C. TANSINGCO, MIGUEL FERNANDO C. TANGSINGCO, CARLO JOSEMARIA C. TANSINGCO & JUAN PAOLO C. TANSINGCO, SPOUSES MARIANO V. ARANETA & EILEEN Z. ARANETA FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN, RAMON CARLOS Z. ARANETA & MAYA ANGELICA Z. ARANETA, SPOUSES RENATO C. CASTOR & MILDRED C. CASTOR FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN, RENZ JEFFREY C. CASTOR, JOSEPH RAMIL C. CASTOR, JOHN PAUL C. CASTOR & RAPHAEL C. CASTOR, SPOUSES ALEXANDER R. RACHO & ZARA Z. RACHO FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN MARGARITA RACHO, MIKAELA RACHO, MARTIN RACHO, MARI RACHO & MANOLO RACHO, SPOUSES ALFRED R. RACHO & FRANCINE V. RACHO FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN MICHAEL RACHO, MARIANA RACHO, RAFAEL RACHO, MAXI RACHO, CHESSIE RACHO & LAURA RACHO, SPOUSES DAVID R. RACHO & ARMILYN A. RACHO FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILD GABRIEL RACHO, MINDY M. JUATAS AND ON BEHALF OF HER MINOR CHILDREN ELIJAH GERALD JUATAS AND ELIAN GABRIEL JUATAS, SALVACION M. MONTEIRO, EMILY R. LAWS, JOSEPH R. LAWS & KATRINA R. LAWS, PETITIONERS, VS. HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY, HON. ENRIQUE T. ONA, SECRETARY, DEPARTMENT OF HEALTH, HON. ARMIN A. LUISTRO, SECRETARY, DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, HON. CORAZON SOLIMAN, SECRETARY, DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, HON. MANUEL A. ROXAS II, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, HON. FLORENCIO B. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT, HON. ARSENIO M. BALISACAN, SOCIO-ECONOMIC PLANNING SECRETARY AND NEDA DIRECTOR-GENERAL, THE PHILIPPINE COMMISSION ON WOMEN, REPRESENTED BY ITS CHAIRPERSON, REMEDIOS IGNACIO-RIKKEN, THE PHILIPPINE HEALTH INSURANCE CORPORATION, REPRESENTED BY ITS PRESIDENT EDUARDO BANZON, THE LEAGUE OF PROVINCES OF THE PHILIPPINES, REPRESENTED BY ITS PRESIDENT ALFONSO UMALI, THE LEAGUE OF CITIES OF THE PHILIPPINES, REPRESENTED BY ITS PRESIDENT OSCAR RODRIGUEZ, AND THE LEAGUE OF MUNICIPALITIES OF THE PHILIPPINES, REPRESENTED BY ITS PRESIDENT DONATO MARCOS, RESPONDENTS.

[G.R. NO. 204957]

TASK FORCE FOR FAMILY AND LIFE VISAYAS, INC. AND VALERIANO S. AVILA, PETITIONERS, VS. HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY; HON. FLORENCIO B. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT; HON. ENRIQUE T. ONA, SECRETARY, DEPARTMENT OF EDUCATION; AND HON. MANUEL A. ROXAS II, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

[G.R. NO. 204988]

SERVE LIFE CAGAYAN DE ORO CITY, INC., REPRESENTED BY DR. NESTOR B. LUMICAO, M.D., AS PRESIDENT AND IN HIS PERSONAL CAPACITY, ROSEVALE FOUNDATION INC., REPRESENTED BY DR. RODRIGO M. ALENTON, M.D., AS MEMBER OF THE SCHOOL BOARD AND IN HIS PERSONAL CAPACITY, ROSEMARIE R. ALENTON, IMELDA G. IBARRA, CPA, LOVENIA P. NACES, PHD., ANTHONY G. NAGAC, EARL ANTHONY C. GAMBE AND MARLON I. YAP, PETITIONERS, VS. OFFICE OF THE PRESIDENT, SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES, HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY, HON. FLORENCIO B. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT; HON. ENRIQUE T. ONA, SECRETARY, DEPARTMENT OF HEALTH; HON. ARMIN A. LUISTRO, SECRETARY, DEPARTMENT OF EDUCATION AND HON. MANUEL A. ROXAS II, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

[G.R. NO. 205003]

EXPEDITO A. BUGARIN, JR., PETITIONER, VS. OFFICE OF THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, HON. SENATE PRESIDENT, HON. SPEAKER OF THE HOUSE OF REPRESENTATIVES AND HON. SOLICITOR GENERAL, RESPONDENTS.

[G.R. NO. 205043]

EDUARDO B. OLAGUER AND THE CATHOLIC XYBRSPACE APOSTOLATE OF THE PHILIPPINES, PETITIONERS, VS. DOH SECRETARY ENRIQUE T. ONA, FDA DIRECTOR SUZETTE H. LAZO, DBM SECRETARY FLORENCIO B. ABAD, DILG SECRETARY MANUEL A. ROXAS II, DECS SECRETARY ARMIN A. LUISTRO, RESPONDENTS.

[G.R. NO. 205138]

PHILIPPINE ALLIANCE OF XSEMINARIANS, INC. (PAX), HEREIN REPRESENTED BY ITS NATIONAL PRESIDENT, ATTY. RICARDO M. RIBO, AND IN HIS OWN BEHALF, ATTY. LINO E.A. DUMAS, ROMEO B. ALMONTE, OSMUNDO C. ORLANES, ARSENIO Z. MENOR, SAMUEL J. YAP, JAIME F. MATEO, ROLLY SIGUAN, DANTE E. MAGDANGAL, MICHAEL EUGENIO O. PLANA, BIENVENIDO C. MIGUEL, JR., LANDRITO M. DIOKNO AND BALDOMERO FALCONE, PETITIONERS, VS. HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY, HON. FLORENCIO B. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT, HON. ENRIQUE T. ONA, SECRETARY, DEPARTMENT OF HEALTH, HON. ARMIN A. LUISTRO, SECRETARY, DEPARTMENT OF EDUCATION, HON. MANUEL A. ROXAS II, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, HON. CORAZON J. SOLIMAN, SECRETARY, DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, HON. ARSENIO BALISACAN, DIRECTOR-GENERAL, NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY, HON. SUZETTE H. LAZO, DIRECTOR-GENERAL, FOOD AND DRUGS ADMINISTRATION, THE BOARD OF DIRECTORS, PHILIPPINE HEALTH INSURANCE CORPORATION, AND THE BOARD OF COMMISSIONERS, PHILIPPINE COMMISSION ON WOMEN, RESPONDENTS.

[G.R. NO. 205478]

REYNALDO J. ECHAVEZ, M.D., JACQUELINE H. KING, M.D., CYNTHIA T. DOMINGO, M.D., AND JOSEPHINE MILLADO-LUMITAO, M.D., COLLECTIVELY KNOWN AS DOCTORS FOR LIFE, AND ANTHONY PEREZ, MICHAEL ANTHONY G. MAPA, CARLOS ANTONIO PALAD, WILFREDO JOSE, CLAIRE NAVARRO, ANNA COSIO, AND GABRIEL DY LIACCO COLLECTIVELY KNOWN AS FILIPINOS FOR LIFE, PETITIONERS, VS. HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY; HON. FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; HON. ENRIQUE T. ONA, SECRETARY OF THE DEPARTMENT OF HEALTH; HON. ARMIN A. LUISTRO, SECRETARY OF THE DEPARTMENT OF EDUCATION; AND HON. MANUEL A. ROXAS II, SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

[G.R. NO. 205491]

SPOUSES FRANCISCO S. TATAD AND MARIA FENNY C. TATAD & ALA F. PAGUIA, FOR THEMSELVES, THEIR POSTERITY, AND THE REST OF FILIPINO POSTERITY PETITIONERS, VS. OFFICE OF THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, RESPONDENT.

[G.R. NO. 205720]

PRO-LIFE PHILIPPINES FOUNDATION, INC., REPRESENTED BY LORNA MELEGRITO, AS

EXECUTIVE DIRECTOR, AND IN HER PERSONAL CAPACITY, JOSELYN B. BASILIO, ROBERT Z. CORTES, ARIEL A. CRISOSTOMO, JEREMY I. GATDULA, CRISTINA A. MONTES, RAUL ANTONIO A. NIDOY, WINSTON CONRAD B. PADOJINOG, RUFINO L. POLICARPIO III, PETITIONERS, VS. OFFICE OF THE PRESIDENT, SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES, HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY, HON. FLORENCIO B. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT, HON. ENRIQUE T. ONA, SECRETARY, DEPARTMENT OF HEALTH, HON. ARMIN A. LUISTRO, SECRETARY, DEPARTMENT OF EDUCATION AND HON. MANUEL A. ROXAS II, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

[G.R. NO. 206355]

MILLENNIUM SAINT FOUNDATION, INC., ATTY. RAMON PEDROSA, ATTY. CITA BORROMEO-GARCIA, STELLA ACEDERA, ATTY. BERTENI CATALUÑA CAUSING, PETITIONERS, VS. OFFICE OF THE PRESIDENT, OFFICE OF THE EXECUTIVE SECRETARY, DEPARTMENT OF HEALTH, DEPARTMENT OF EDUCATION, RESPONDENTS.

[G.R. NO. 207111]

JOHN WALTER B. JUAT, MARY M. IMBONG, ANTHONY VICTORIO B. LUMICAO, JOSEPH MARTIN Q. VERDEJO, ANTONIA EMMA R. ROXAS AND LOTA LAT-GUERRERO, PETITIONERS VS. HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY, HON. FLORENCIO ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT, HON. ENRIQUE T. ONA, SECRETARY, DEPARTMENT OF HEALTH, HON. ARMIN A. LUISTRO, SECRETARY, DEPARTMENT OF EDUCATION, CULTURE AND SPORTS AND HON. MANUEL A. ROXAS II, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

[G.R. NO. 207172]

COUPLES FOR CHRIST FOUNDATION, INC., SPOUSES JUAN CARLOS ARTADI SARMIENTO AND FRANCESCA ISABELLE BESINGA-SARMIENTO, AND SPOUSES LUIS FRANCIS A. RODRIGO, JR. AND DEBORAH MARIE VERONICA N. RODRIGO. PETITIONERS, VS. HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY, HON. FLORENCIO B. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT, HON. ENRIQUE T. ONA, SECRETARY, DEPARTMENT OF HEALTH, HON. ARMIN A. LUISTRO, SECRETARY, DEPARTMENT OF EDUCATION, CULTURE AND SPORTS AND HON. MANUEL A. ROXAS II, SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

[G.R. NO. 207563]

ALMARIM CENTI TILLAH AND ABDULHUSSEIN M. KASHIM, PETITIONERS, VS. HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY, HON. ENRIQUE T. ONA, SECRETARY OF THE DEPARTMENT OF HEALTH, AND HON. ARMIN A. LUISTRO,SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

> *Freedom of religion was accorded preferred status by the framers of our fundamental law. And this Court has consistently affirmed this preferred status, well aware that it is "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good."*[1]

To this day, poverty is still a major stumbling block to the nation's emergence as a developed country, leaving our people beleaguered in a state of hunger, illiteracy and unemployment. While governmental policies have been geared towards the revitalization of the economy, the bludgeoning dearth in social services remains to be a problem that concerns not only the poor, but every member of society. The government continues to tread on a trying path to the realization of its very purpose, that is, the general welfare of the Filipino people and the development of the country as a whole. The legislative branch, as the main facet of a representative government, endeavors to enact laws and policies that aim to remedy looming societal woes, while the executive is closed set to fully implement these measures and bring concrete and substantial solutions within the reach of Juan dela Cruz. Seemingly distant is the judicial branch, oftentimes regarded as an inert governmental body that merely casts its watchful eyes on clashing stakeholders until it is called upon to adjudicate. Passive, yet reflexive when called into action, the Judiciary then willingly embarks on its solemn duty to interpret legislation vis-à-vis the most vital and enduring principle that holds Philippine society together — the supremacy of the Philippine Constitution.

Nothing has polarized the nation more in recent years than the issues of population growth control, abortion and contraception. As in every democratic society, diametrically opposed views on the subjects and their perceived consequences freely circulate in various media. From television debates[2] to sticker campaigns,[3] from rallies by socio-political activists to mass gatherings organized by members of the clergy[4] – the clash between the seemingly antithetical ideologies of the religious conservatives and progressive liberals has caused a deep division in every level of the society. Despite calls to withhold support thereto, however, Republic Act (*R.A.*) No. 10354, otherwise known as the Responsible Parenthood and Reproductive Health Act of 2012 (*RH Law*), was enacted by Congress on December 21, 2012.

Shortly after the President placed his *imprimatur* on the said law, challengers from various sectors of society came knocking on the doors of the Court, beckoning it to wield the sword that strikes down constitutional disobedience. Aware of the profound and lasting impact that its decision may produce, the Court now faces the *iuris controversy* as presented in fourteen (14) petitions and two (2) petitions- in-intervention, to wit:

(1) Petition for *Certiorari* and Prohibition,[5] filed by spouses Attys. James M. Imbong and Lovely Ann C. Imbong, in their personal capacities as citizens, lawyers and taxpayers and on behalf of their minor children; and the Magnificat Child Learning Center, Inc., a domestic, privately-owned educational institution (*Imbong*);

(2) Petition for Prohibition,[6] filed by the Alliance for the Family Foundation Philippines, Inc., through its president, Atty. Maria Concepcion S. Noche[7] and several others[8] in their personal capacities as citizens and on behalf of the generations unborn (*ALFI*);

(3) Petition for *Certiorari*,[9] filed by the Task Force for Family and Life Visayas, Inc., and Valeriano S. Avila, in their capacities as citizens and taxpayers (*Task Force Family*);

(4) Petition for *Certiorari* and Prohibition,[10] filed by Serve Life Cagayan De Oro City, Inc.,[11] Rosevale Foundation, Inc.,[12] a domestic, privately-owned educational institution, and several others,[13]in their capacities as citizens (*Serve Life*);

(5) Petition,[14] filed by Expedito A. Bugarin, Jr. in his capacity as a citizen (*Bugarin*);

(6) Petition for *Certiorari* and Prohibition,[15] filed by Eduardo Olaguer and the Catholic Xybrspace Apostolate of the Philippines,[16] in their capacities as a citizens and taxpayers (*Olaguer*);

(7) Petition for *Certiorari* and Prohibition,[17] filed by the Philippine Alliance of Xseminarians Inc.,[18] and several others[19] in their capacities as citizens and taxpayers (*PAX*);

(8) Petition,[20] filed by Reynaldo J. Echavez, M.D. and several others,[21] in their capacities as citizens and taxpayers (Echavez);

(9) Petition for *Certiorari* and Prohibition,[22] filed by spouses Francisco and Maria Fenny C. Tatad and Atty. Alan F. Paguia, in their capacities as citizens, taxpayers and on behalf of those yet unborn. Atty. Alan F. Paguia is also proceeding in his capacity as a member of the Bar (*Tatad*);

(10) Petition for *Certiorari* and Prohibition,[23] filed by Pro-Life Philippines Foundation Inc.[24] and several others,[25] in their capacities as citizens and taxpayers and on behalf of its associates who are members of the Bar (*Pro-Life*);

(11) Petition for Prohibition,[26] filed by Millennium Saint Foundation, Inc.,[27] Attys. Ramon Pedrosa, Cita Borromeo-Garcia, Stella Acedera, and Berteni Cataluña Causing, in their capacities as citizens, taxpayers and members of the Bar (*MSF*);

(12) Petition for *Certiorari* and Prohibition,[28] filed by John Walter B. Juat and several others,[29] in their capacities as citizens (*Juat*);

(13) Petition for *Certiorari* and Prohibition,[30] filed by Couples for Christ Foundation, Inc. and several others,[31] in their capacities as citizens (CFC);

(14) Petition for Prohibition[32] filed by Almarim Centi Tillah and Abdulhussein M. Kashim in their capacities as citizens and taxpayers (*Tillah*); and

(15) Petition-In-Intervention,[33] filed by Atty. Samson S. Alcantara in his capacity as a citizen and a taxpayer (*Alcantara*); and

(16) Petition-In-Intervention,[34] filed by Buhay Hayaang Yumabong (*BUHAY*), an accredited political party.

A perusal of the foregoing petitions shows that the petitioners are assailing the constitutionality of RH Law on the following

GROUNDS:

- The RH Law violates the **right to life** of the unborn. According to the petitioners, notwithstanding its declared policy against abortion, the implementation of the RH Law would authorize the purchase of hormonal contraceptives, intra-uterine devices and injectables which are abortives, in violation of Section 12, Article II of the Constitution which guarantees protection of both the life of the mother and the life of the unborn from conception.[35]
- The RH Law violates the **right to health** and the **right to protection against hazardous products**. The petitioners posit that the RH Law provides universal access to contraceptives which are hazardous to one's health, as it causes cancer and other health problems.[36]
- The RH Law violates the **right to religious freedom**. The petitioners contend that the RH Law violates the constitutional guarantee respecting religion as it authorizes the use of public funds for the procurement of contraceptives. For the petitioners, the use of public funds for purposes that are believed to be contrary to their beliefs is included in the constitutional mandate ensuring religious freedom.[37]

It is also contended that the RH Law threatens conscientious objectors of criminal prosecution, imprisonment and other forms of punishment, as it compels *medical practitioners* 1] to refer patients who seek advice on reproductive health programs to other doctors; and 2] to provide full and correct information on reproductive health programs and service, although it is against their religious beliefs and convictions.[38]

In this connection, Section 5.23 of the Implementing Rules and Regulations of the RH Law (*RH-IRR*),[39] provides that **skilled health professionals who are public officers** such as, but not limited to, Provincial, City, or Municipal Health Officers, medical officers, medical specialists, rural health physicians, hospital staff nurses, public health nurses, or rural health midwives, who are specifically charged with the duty to implement these Rules, **cannot be considered as conscientious objectors.**[40]

It is also argued that the RH Law providing for the formulation of **mandatory sex education** in schools should not be allowed as it is an affront to their religious beliefs.[41]

While the petitioners recognize that the guarantee of religious freedom is not absolute, they argue that the RH Law fails to satisfy the "**clear and present danger test**" and the "**compelling state interest test**" to justify the regulation of the right to free exercise of religion and the right to free speech.[42]

- The RH Law violates the constitutional provision on **involuntary servitude**. According to the petitioners, the RH Law subjects *medical practitioners* to involuntary servitude because, to be accredited under the PhilHealth program, they are compelled to provide forty-eight (48) hours of *pro bono* services for indigent women, under threat of criminal prosecution, imprisonment and other forms of punishment.[43]

  The petitioners explain that since a majority of patients are covered by PhilHealth, a medical practitioner would effectively be forced to render reproductive health services since the lack of PhilHealth accreditation would mean that the majority of the public would no longer be able to avail of the practitioners' services.[44]

- The RH Law violates the right to equal protection of the law. It is claimed that the RH Law discriminates against the poor as it makes them the primary target of the government program that promotes contraceptive use. The petitioners argue that, rather than promoting reproductive health among the poor, the RH Law seeks to introduce contraceptives that would effectively reduce the number of the poor.[45]

- The RH Law is "void-for-vagueness" in violation of the due process clause of the Constitution. In imposing the penalty of imprisonment and/or fine for "any violation," it is vague because it does not define the type of conduct to be treated as "violation" of the RH Law. [46]

In this connection, it is claimed that "Section 7 of the RH Law violates the right to due process by removing from them (the people) the right to manage their own affairs and to decide what kind of health facility they shall be and what kind of services they shall offer."[47] It ignores the management prerogative inherent in corporations for employers to conduct their affairs in accordance with their own discretion and judgment.

- The RH Law violates the **right to free speech**. To compel a person to explain a full range of family planning methods is plainly to curtail his right to expound only his own preferred way of family planning. The petitioners note that although exemption is granted to institutions owned and operated by religious groups, they are still

forced to refer their patients to another healthcare facility willing to perform the service or procedure.[48]

- The RH Law intrudes into the **zone of privacy of one's family** protected by the Constitution. It is contended that the RH Law providing for mandatory reproductive health education intrudes upon their constitutional right to raise their children in accordance with their beliefs.[49]

It is claimed that, by giving absolute authority to the person who will undergo reproductive health procedure, the RH Law forsakes any real dialogue between the spouses and impedes the right of spouses to mutually decide on matters pertaining to the overall well-being of their family. In the same breath, it is also claimed that the parents of a child who has suffered a miscarriage are deprived of parental authority to determine whether their child should use contraceptives.[50]

- The RH Law violates the constitutional principle of non-delegation of legislative authority. The petitioners question the delegation by Congress to the FDA of the power to determine whether a product is non-abortifacient and to be included in the Emergency Drugs List (*EDL*).[51]
- The RH Law violates the **one subject/one bill** rule provision under Section 26(1), Article VI of the Constitution.[52]
- The RH Law violates **Natural Law**.[53]
- The RH Law violates the principle of **Autonomy of Local Government Units** (*LGUs*) and the **Autonomous Region of Muslim Mindanao** (*ARMM*). It is contended that the RH Law, providing for reproductive health measures at the local government level and the ARMM, infringes upon the powers devolved to LGUs and the ARMM under the Local Government Code and R.A. No. 9054.[54]

Various parties also sought and were granted leave to file their respective comments-in-intervention in defense of the constitutionality of the RH Law. Aside from the Office of the Solicitor General (*OSG*) which commented on the petitions in behalf of the respondents,[55] Congressman Edcel C. Lagman,[56] former officials of the Department of Health Dr. Esperanza I. Cabral, Jamie Galvez-Tan, and Dr. Alberto G. Romualdez,[57] the Filipino Catholic Voices for Reproductive Health (*C4RH*),[58] Ana Theresa "Risa" Hontiveros,[59]and Atty. Joan De Venecia[60] also filed their respective Comments-in-Intervention in conjunction with several others. On June 4, 2013, Senator Pia Juliana S. Cayetano was also granted leave to intervene.[61]

The respondents, aside from traversing the substantive arguments of the petitioners, pray for the dismissal of the petitions for the principal reasons that **1]** there is no actual case or controversy and, therefore, the issues are not yet ripe for judicial determination.; **2]** some petitioners lack standing to question the RH Law; and **3]** the petitions are essentially petitions for declaratory relief over which the Court has no original jurisdiction.

Meanwhile, on March 15, 2013, the RH-IRR for the enforcement of the assailed legislation took effect.

On March 19, 2013, after considering the issues and arguments raised, the Court issued the Status Quo Ante Order (*SQAO*), enjoining the effects and implementation of the assailed legislation for a period of one hundred and twenty (120) days, or until July 17, 2013.[62]

On May 30, 2013, the Court held a preliminary conference with the counsels of the parties to determine and/or identify the pertinent issues raised by the parties and the sequence by which these issues were to be discussed in the oral arguments. On July 9 and 23, 2013, and on August 6, 13, and 27, 2013, the cases were heard on oral argument. On July 16, 2013, the SQAO was ordered extended until further orders of the Court.[63]

Thereafter, the Court directed the parties to submit their respective memoranda within sixty (60) days and, at the same time posed several questions for their clarification on some contentions of the parties.[64]

The Status Quo Ante
(Population, Contraceptive and Reproductive Health Laws
Prior to the RH Law

Long before the incipience of the RH Law, the country has allowed the sale, dispensation and distribution of contraceptive drugs and devices. As far back as June 18, 1966, the country enacted **R.A. No. 4729** entitled "*An Act to Regulate the Sale, Dispensation, and/or Distribution of Contraceptive Drugs and Devices.*" Although contraceptive drugs and devices were allowed, they could not be sold, dispensed or distributed "unless such sale, dispensation and distribution is by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner."[65]

In addition, **R.A. No. 5921**,[66] approved on June 21, 1969, contained provisions relative to "dispensing of abortifacients or anti-

conceptional substances and devices." Under Section 37 thereof, it was provided that "no drug or chemical product or device capable of provoking abortion or preventing conception as classified by the Food and Drug Administration shall be delivered or sold to any person without a proper prescription by a duly licensed physician."

On December 11, 1967, the Philippines, adhering to the UN Declaration on Population, which recognized that the population problem should be considered as the principal element for long-term economic development, enacted measures that promoted male vasectomy and tubal ligation to mitigate population growth. [67] Among these measures included **R.A. No. 6365**, approved on August 16, 1971, entitled *"An Act Establishing a National Policy on Population, Creating the Commission on Population and for Other Purposes."* The law envisioned that "family planning will be made part of a broad educational program; safe and effective means will be provided to couples desiring to space or limit family size; mortality and morbidity rates will be further reduced."

To further strengthen R.A. No. 6365, then President Ferdinand E. Marcos issued **Presidential Decree. *(P.D.)* No. 79**,[68] dated December 8, 1972, which, among others, made "family planning a part of a broad educational program," provided "family planning services as a part of over-all health care," and made "available all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies."

Through the years, however, the use of contraceptives and family planning methods evolved from being a component of demographic management, to one centered on the promotion of public health, particularly, reproductive health.[69] Under that policy, the country gave priority to one's right to freely choose the method of family planning to be adopted, in conformity with its adherence to the commitments made in the International Conference on Population and Development.[70] Thus, on August 14, 2009, the country enacted **R.A. No. 9710** or *"The Magna Carta for Women,"* which, among others, mandated the State to provide for comprehensive health services and programs for women, including family planning and sex education.[71]

The RH Law

Despite the foregoing legislative measures, the population of the country kept on galloping at an uncontrollable pace. From a paltry number of just over 27 million Filipinos in 1960, the population of the country reached over 76 million in the year 2000 and over 92 million in 2010.[72] The executive and the legislative, thus, felt that the measures were still not adequate. To rein in the problem, the RH Law was enacted to provide Filipinos, especially the poor and the marginalized, access and information to the full range of modern family planning methods, and to ensure that its objective to provide for the peoples' right to reproductive health be achieved. To make it more effective, the RH Law made it mandatory for health providers to provide information on the full range of modern family planning methods, supplies and services, and for schools to provide reproductive health education. To put teeth to it, the RH Law criminalizes certain acts of refusals to carry out its mandates.

Stated differently, the RH Law is an *enhancement measure* to fortify and make effective the current laws on contraception, women's health and population control.

Prayer of the Petitioners – Maintain the *Status Quo*

The petitioners are one in praying that the entire RH Law be declared unconstitutional. Petitioner ALFI, in particular, argues that the government sponsored contraception program, the very essence of the RH Law, violates the right to health of women and the sanctity of life, which the State is mandated to protect and promote. Thus, ALFI prays that "*the status quo ante – the situation prior to the passage of the RH Law – must be maintained*."[73] It explains:

> x x x. The instant Petition does not question contraception and contraceptives per se. As provided under Republic Act No. 5921 and Republic Act No. 4729, the sale and distribution of contraceptives are prohibited unless dispensed by a prescription duly licensed by a physician. What the Petitioners find deplorable and repugnant under the RH Law is the role that the State and its agencies – the entire bureaucracy, from the cabinet secretaries down to the barangay officials in the remotest areas of the country – is made to play in the implementation of the contraception program to the fullest extent possible using taxpayers' money. The State then will be the funder and provider of all forms of family planning methods and the implementer of the program by ensuring the widespread dissemination of, and universal access to, a full range of family planning methods, devices and supplies.[74]

ISSUES

After a scrutiny of the various arguments and contentions of the parties, the Court has synthesized and refined them to the following principal issues:

I. **PROCEDURAL**: Whether the Court may exercise its power of judicial review over the controversy.

1] Power of Judicial Review
2] Actual Case or Controversy

3] Facial Challenge
4] Locus Standi
5] Declaratory Relief
6] One Subject/One Title Rule

II. **SUBSTANTIVE**: Whether the RH law is unconstitutional:

1] Right to Life
2] Right to Health
3] Freedom of Religion and the Right to Free Speech
4] The Family
5] Freedom of Expression and Academic Freedom
6] Due Process
7] Equal Protection
8] Involuntary Servitude
9] Delegation of Authority to the FDA
10] Autonomy of Local Governments/ARMM

DISCUSSION

Before delving into the constitutionality of the RH Law and its implementing rules, it behooves the Court to resolve some procedural impediments.

I. PROCEDURAL ISSUE: Whether the Court can exercise its power of judicial review over the controversy.

The Power of Judicial Review

In its attempt to persuade the Court to stay its judicial hand, the OSG asserts that it should submit to the legislative and political wisdom of Congress and respect the compromises made in the crafting of the RH Law, it being "a product of a majoritarian democratic process"[75] and "characterized by an inordinate amount of transparency."[76] The OSG posits that the authority of the Court to review social legislation like the RH Law by *certiorari* is "weak," since the Constitution vests the discretion to implement the constitutional policies and positive norms with the political departments, in particular, with Congress.[77] It further asserts that in view of the Court's ruling in *Southern Hemisphere v. Anti-Terrorism Council*,[78] the remedies of *certiorari* and prohibition utilized by the petitioners are improper to assail the validity of the acts of the legislature.[79]

Moreover, the OSG submits that as an "as applied challenge," it cannot prosper considering that the assailed law has yet to be enforced and applied to the petitioners, and that the government has yet to distribute reproductive health devices that are abortive. It claims that the RH Law cannot be challenged "on its face" as it is not a speech-regulating measure. [80]

In many cases involving the determination of the constitutionality of the actions of the Executive and the Legislature, it is often sought that the Court temper its exercise of judicial power and accord due respect to the wisdom of its co-equal branch on the basis of the principle of separation of powers. To be clear, the separation of powers is a fundamental principle in our system of government, which obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction and is supreme within its own sphere.[81] Thus, the 1987 Constitution provides that: (a) the legislative power shall be vested in the Congress of the Philippines;[82] (b) the executive power shall be vested in the President of the Philippines;[83] and (c) the judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.[84] The Constitution has truly blocked out with deft strokes and in bold lines, the allotment of powers among the three branches of government.[85]

In its relationship with its co-equals, the Judiciary recognizes the doctrine of separation of powers which imposes upon the courts proper restraint, born of the nature of their functions and of their respect for the other branches of government, in striking down the acts of the Executive or the Legislature as unconstitutional. Verily, the policy is a harmonious blend of courtesy and caution. [86]

It has also long been observed, however, that in times of social disquietude or political instability, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated.[87] In order to address this, the Constitution impresses upon the Court to respect the acts performed by a co-equal branch done within its sphere of competence and authority, but at the same time, allows it to cross the line of separation – but only at a very limited and specific point – to determine whether the acts of the executive and the legislative branches are null because they were undertaken with grave abuse of discretion.[88] Thus, while the Court may not pass upon questions of wisdom, justice or expediency of the RH Law, it may do so where an attendant unconstitutionality or grave abuse of discretion results.[89] The Court must demonstrate its unflinching commitment to protect those cherished rights and principles embodied in the Constitution.

In this connection, it bears adding that while the scope of judicial power of review may be limited, the Constitution makes no distinction as to the kind of legislation that may be subject to judicial scrutiny, be it in the form of social legislation or otherwise. The reason is simple and goes back to the earlier point. The Court may pass upon the constitutionality of acts of the legislative and the executive branches, since its duty is not to review their collective wisdom but, rather, to make sure that they have acted in consonance with their respective authorities and rights as mandated of them by the Constitution. If after said review, the Court finds no constitutional violations of any sort, then, it has no more authority of proscribing the actions under review.[90] This is in line with Article VIII, Section 1 of the Constitution which expressly provides:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to **settle actual controversies involving rights which are legally demandable and enforceable**, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**. [Emphases supplied]

As far back as *Tañada v. Angara*, [91] the Court has unequivocally declared that *certiorari*, prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials, as there is no other plain, speedy or adequate remedy in the ordinary course of law. This ruling was later on applied in *Macalintal v. COMELEC*,[92] *Aldaba v. COMELEC,*[93] *Magallona v. Ermita*,[94] and countless others. In *Tañada,* the Court wrote:

> In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. **Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute**. "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld." Once a "controversy as to the application or interpretation of constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide. [Emphasis supplied]

In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, **"judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government** through the definition and maintenance of the boundaries of authority and control between them. To him, judicial review is the chief, indeed the only, medium of participation - or instrument of intervention - of the judiciary in that balancing operation."[95]

Lest it be misunderstood, it bears emphasizing that the Court does not have the unbridled authority to rule on just any and every claim of constitutional violation. Jurisprudence is replete with the rule that the power of judicial review is limited by four exacting requisites, *viz*: (a) there must be an actual case or controversy; (b) the petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case.[96]

Actual Case or Controversy

Proponents of the RH Law submit that the subject petitions do not present any actual case or controversy because the RH Law has yet to be implemented.[97] They claim that the questions raised by the petitions are not yet concrete and ripe for adjudication since no one has been charged with violating any of its provisions and that there is no showing that any of the petitioners' rights has been adversely affected by its operation.[98] In short, it is contended that judicial review of the RH Law is premature.

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.[99] 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.[100]

Corollary to the requirement of an actual case or controversy is the requirement of ripeness.[101] A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For 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. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[102]

In *The Province of North Cotabato v. The Government of the Republic of the Philippines*,[103] where the constitutionality of an unimplemented Memorandum of Agreement on the Ancestral Domain (MOA-AD) was put in question, it was argued that the Court has no authority to pass upon the issues raised as there was yet no concrete act performed that could possibly violate the petitioners' and the intervenors' rights. Citing precedents, the Court ruled that the fact of the law or act in question being not yet effective does not negate ripeness. Concrete acts under a law are not necessary to render the controversy ripe. Even a singular violation of the Constitution and/or the law is enough to awaken judicial duty.

In this case, the Court is of the view **that an actual case or controversy exists and that the same is ripe for judicial determination**. Considering that the RH Law and its implementing rules have already taken effect and that budgetary measures to carry out the law have already been passed, it is evident that the subject petitions present a justiciable controversy. As stated earlier, when an action of the legislative branch is seriously alleged to have infringed the Constitution, it not only becomes a right, but also a duty of the Judiciary to settle the dispute.[104]

Moreover, the petitioners have shown that the case is so because medical practitioners or medical providers are in danger of being criminally prosecuted under the RH Law for vague violations thereof, particularly public health officers who are **threatened to be dismissed from the service with forfeiture of retirement and other benefits**. They must, at least, be heard on the matter **NOW**.

Facial Challenge

The OSG also assails the propriety of the facial challenge lodged by the subject petitions, contending that the RH Law cannot be challenged "on its face" as it is not a speech regulating measure.[105]

The Court is not persuaded.

In United States (*US*) constitutional law, a **facial challenge**, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only **protected speech**, but also all other rights in the First Amendment. [106] These include **religious freedom, freedom of the press**, and the **right of the people to peaceably assemble**, and to **petition the Government for a redress of grievances**. [107] After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statues,[108] it has **expanded** its scope to cover statutes not only regulating free speech, but also those involving **religious freedom**, and **other fundamental rights.**[109] The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.**[110] Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.

Consequently, considering that the foregoing petitions have seriously alleged that the constitutional human rights to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to take cognizance of these kindred petitions and to determine if the RH Law can indeed pass constitutional scrutiny. To dismiss these petitions on the simple expedient that there exist no actual case or controversy, would diminish this Court as a reactive branch of government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people.

Locus Standi

The OSG also attacks the legal personality of the petitioners to file their respective petitions. It contends that the "as applied challenge" lodged by the petitioners cannot prosper as the assailed law has yet to be enforced and applied against them, [111] and the government has yet to distribute reproductive health devices that are abortive.[112]

The petitioners, for their part, invariably invoke the "transcendental importance" doctrine and their status as citizens and taxpayers in establishing the requisite *locus standi*.

Locus standi or legal standing is defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act.[113] It requires a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely

depends for illumination of difficult constitutional questions.[114]

In relation to *locus standi*, the "as applied challenge" embodies the rule that one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. The rule prohibits one from challenging the constitutionality of the statute grounded on a violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.[115]

Transcendental Importance

Notwithstanding, the Court leans on the doctrine that "the rule on standing is a matter of procedure, hence, can be relaxed for non-traditional plaintiffs like ordinary citizens, taxpayers, and legislators when the public interest so requires, such as when the matter is of ***transcendental importance***, of overreaching significance to society, or of paramount public interest."[116]

In *Coconut Oil Refiners Association, Inc. v. Torres*,[117] the Court held that in cases of **paramount importance** where serious constitutional questions are involved, the standing requirement may be relaxed and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review. In the first *Emergency Powers Cases*,[118] ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders although they had only an indirect and general interest shared in common with the public.

With these said, even if the constitutionality of the RH Law may not be assailed through an "as-applied challenge, still, the Court has time and again acted liberally on the *locus standi* requirement. It has accorded certain individuals standing to sue, not otherwise directly injured or with material interest affected by a Government act, provided a constitutional issue of **transcendental importance** is invoked. The rule on *locus standi* is, after all, a procedural technicality which the Court has, on more than one occasion, waived or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been directly injured by the operation of a law or any other government act. As held in *Jaworski v. PAGCOR*:[119]

> Granting *arguendo* that the present action cannot be properly treated as a petition for prohibition, **the transcendental importance of the issues involved in this case warrants that we set aside the technical defects and take primary jurisdiction over the petition at bar**. One cannot deny that the issues raised herein have potentially pervasive influence on the social and moral well being of this nation, specially the youth; hence, their proper and just determination is an imperative need. **This is in accordance with the well-entrenched principle that rules of procedure are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate, rather than promote substantial justice, must always be eschewed**. (Emphasis supplied)

In view of the seriousness, novelty and weight as precedents, not only to the public, but also to the bench and bar, the issues raised must be resolved for the guidance of all. After all, the RH Law drastically affects the constitutional provisions on the **right to life and health**, the **freedom of religion** and expression and other constitutional rights. Mindful of all these and the fact that the issues of contraception and reproductive health have already caused deep division among a broad spectrum of society, the Court entertains no doubt that the petitions raise issues of **transcendental importance** warranting immediate court adjudication. More importantly, considering that it is the right to life of the mother and the unborn which is primarily at issue, the Court need not wait for a life to be taken away before taking action.

The Court cannot, and should not, exercise judicial restraint at this time when rights enshrined in the Constitution are being imperilled to be violated. To do so, when the life of either the mother or her child is at stake, would lead to irreparable consequences.

Declaratory Relief

The respondents also assail the petitions because they are essentially petitions for declaratory relief over which the Court has no original jurisdiction.[120] Suffice it to state that most of the petitions are praying for injunctive reliefs and so the Court would just consider them as petitions for prohibition under Rule 65, over which it has original jurisdiction. Where the case has far-reaching implications and prays for injunctive reliefs, the Court may consider them as petitions for prohibition under Rule 65.[121]

One Subject-One Title

The petitioners also question the constitutionality of the RH Law, claiming that it violates Section 26(1), Article VI of the Constitution,[122] prescribing the one subject-one title rule. According to them, being one for reproductive health with responsible parenthood, the assailed legislation violates the constitutional standards of due process by concealing its true intent – to act as a population control measure.[123]

To belittle the challenge, the respondents insist that the RH Law is not a birth or population control measure,[124] and that the

concepts of "responsible parenthood" and "reproductive health" are both interrelated as they are inseparable.[125]

Despite efforts to push the RH Law as a reproductive health law, the Court sees it as principally a population control measure. The corpus of the RH Law is geared towards the reduction of the country's population. While it claims to save lives and keep our women and children healthy, it also promotes pregnancy-preventing products. As stated earlier, the RH Law emphasizes the need to provide Filipinos, especially the poor and the marginalized, with access to information on the full range of modern family planning products and methods. These family planning methods, natural or modern, however, are clearly geared towards the prevention of pregnancy. For said reason, the manifest underlying objective of the RH Law is to reduce the number of births in the country.

It cannot be denied that the measure also seeks to provide pre-natal and post-natal care as well. A large portion of the law, however, covers the dissemination of information and provisions on access to medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive health care services, methods, devices, and supplies, which are all intended to prevent pregnancy.

The Court, thus, agrees with the petitioners' contention that the whole idea of contraception pervades the entire RH Law. It is, in fact, the central idea of the RH Law.[126] Indeed, remove the provisions that refer to contraception or are related to it and the RH Law loses its very foundation.[127] As earlier explained, "the other positive provisions such as skilled birth attendance, maternal care including pre-and post-natal services, prevention and management of reproductive tract infections including HIV/AIDS are already provided for in the Magna Carta for Women."[128]

Be that as it may, the RH Law does not violate the one subject/one bill rule. In *Benjamin E. Cawaling, Jr. v. The Commission on Elections and Rep. Francis Joseph G. Escudero,* it was written:

> It is well-settled that the "one title-one subject" rule does not require the Congress to employ in the title of the enactment language of such precision as to mirror, fully index or catalogue all the contents and the minute details therein. **The rule is sufficiently complied with if the title is comprehensive enough as to include the general object which the statute seeks to effect**, and where, as here, the persons interested are informed of the nature, scope and consequences of the proposed law and its operation. Moreover, **this Court has invariably adopted a liberal rather than technical construction of the rule "so as not to cripple or impede legislation.**" [Emphases supplied]

In this case, a textual analysis of the various provisions of the law shows that both "reproductive health" and "responsible parenthood" are **interrelated and germane to the overriding objective to control the population growth**. As expressed in the first paragraph of Section 2 of the RH Law:

> SEC. 2. Declaration of Policy. – The State recognizes and guarantees the human rights of all persons including their right to equality and nondiscrimination of these rights, the right to sustainable human development, the right to health which includes reproductive health, the right to education and information, and the right to choose and make decisions for themselves in accordance with their religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood.

The one subject/one title rule expresses the principle that the title of a law must not be "so uncertain that the average person reading it would not be informed of the purpose of the enactment or put on inquiry as to its contents, or which is misleading, either in referring to or indicating one subject where another or different one is really embraced in the act, or in omitting any expression or indication of the real subject or scope of the act."[129] Considering the close intimacy between "reproductive health" and "responsible parenthood" which bears to the attainment of the goal of achieving "sustainable human development" as stated under its terms, the Court finds no reason to believe that Congress intentionally sought to deceive the public as to the contents of the assailed legislation.

II - <u>SUBSTANTIVE ISSUES</u>:

<u>1-The Right to Life</u>

Position of the Petitioners

The petitioners assail the RH Law because it violates the right to life and health of the unborn child under Section 12, Article II of the Constitution. The assailed legislation allowing access to abortifacients/abortives effectively sanctions abortion.[130]

According to the petitioners, despite its express terms prohibiting abortion, Section 4(a) of the RH Law considers contraceptives that prevent the fertilized ovum to reach and be implanted in the mother's womb as an abortifacient; thus, sanctioning contraceptives that take effect after fertilization and *prior* to implantation, contrary to the intent of the Framers of the Constitution to afford protection to the fertilized ovum which already has life.

They argue that even if Section 9 of the RH Law allows only "non-abortifacient" hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies, medical research shows that contraceptives use results in abortion as they operate to kill the fertilized ovum which already has life.[131] As it opposes the initiation of life, which is a fundamental human good, the petitioners assert that the State sanction of contraceptive use contravenes natural law and is an affront to the dignity of man.[132]

Finally, it is contended that since Section 9 of the RH Law requires the Food and Drug Administration *(FDA)* to certify that the product or supply is not to be used as an abortifacient, the assailed legislation effectively confirms that abortifacients are not prohibited. Also considering that the FDA is not the agency that will actually supervise or administer the use of these products and supplies to prospective patients, there is no way it can truthfully make a certification that it shall not be used for abortifacient purposes. [133]

Position of the Respondents

For their part, the defenders of the RH Law point out that the intent of the Framers of the Constitution was simply the prohibition of abortion. They contend that the RH Law does not violate the Constitution since the said law emphasizes that only "non-abortifacient" reproductive health care services, methods, devices products and supplies shall be made accessible to the public. [134]

According to the OSG, Congress has made a legislative determination that contraceptives are not abortifacients by enacting the RH Law. As the RH Law was enacted with due consideration to various studies and consultations with the World Health Organization *(WHO)* and other experts in the medical field, it is asserted that the Court afford deference and respect to such a determination and pass judgment only when a particular drug or device is later on determined as an abortive.[135]

For his part, respondent Lagman argues that the constitutional protection of one's right to life is not violated considering that various studies of the WHO show that life begins from the implantation of the fertilized ovum. Consequently, he argues that the RH Law is constitutional since the law specifically provides that only contraceptives that do not prevent the implantation of the fertilized ovum are allowed.[136]

The Court's Position

It is a universally accepted principle that every human being enjoys the right to life.[137] Even if not formally established, the right to life, being grounded on natural law, is inherent and, therefore, not a creation of, or dependent upon a particular law, custom, or belief. It precedes and transcends any authority or the laws of men.

In this jurisdiction, the right to life is given more than ample protection. Section 1, Article III of the Constitution provides:

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

As expounded earlier, the use of contraceptives and family planning methods in the Philippines is not of recent vintage. From the enactment of R.A. No. 4729, entitled *"An Act To Regulate The Sale, Dispensation, and/or Distribution of Contraceptive Drugs and Devices*" on June 18, 1966, prescribing rules on contraceptive drugs and devices which prevent fertilization,[138] to the promotion of male vasectomy and tubal ligation,[139] and the ratification of numerous international agreements, the country has long recognized the need to promote population control through the use of contraceptives in order to achieve long-term economic development. Through the years, however, the use of contraceptives and other family planning methods evolved from being a component of demographic management, to one centered on the promotion of public health, particularly, reproductive health.[140]

This has resulted in the enactment of various measures promoting women's rights and health and the overall promotion of the family's well-being. Thus, aside from R.A. No. 4729, R.A. No. 6365 or *"The Population Act of the Philippines"* and R.A. No. 9710, otherwise known as the *"The Magna Carta of Women"* were legislated. Notwithstanding this paradigm shift, the Philippine national population program has always been grounded two cornerstone principles: "**principle of no-abortion"** and the **"principle of non-coercion."**[141] As will be discussed later, these principles are not merely grounded on administrative policy, but rather, originates from the constitutional protection expressly provided to afford protection to life and guarantee religious freedom.

When Life Begins[*]

Majority of the Members of the Court are of the position that the question of when life begins is a scientific and medical issue that should not be decided, at this stage, without proper hearing and evidence. During the deliberation, however, it was agreed upon that the individual members of the Court could express their own views on this matter.

In this regard, the *ponente*, is of the strong view that life begins at fertilization.

In answering the question of when life begins, focus should be made on the particular phrase of Section 12 which reads:

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

Textually, the Constitution affords protection to the unborn from conception. This is undisputable because before conception, there is no unborn to speak of. For said reason, it is no surprise that the Constitution is mute as to any proscription prior to conception or when life begins. The problem has arisen because, amazingly, there are quarters who have conveniently disregarded the scientific fact that conception is reckoned from fertilization. They are waving the view that life begins at implantation. Hence, the issue of when life begins.

In a nutshell, those opposing the RH Law contend that conception is synonymous with "fertilization" of the female ovum by the male sperm.[142] On the other side of the spectrum are those who assert that conception refers to the "implantation" of the fertilized ovum in the uterus.[143]

Plain and Legal Meaning

It is a canon in statutory construction that the words of the Constitution should be interpreted in their plain and ordinary meaning. As held in the recent case of *Chavez v. Judicial Bar Council*:[144]

> One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. As much as possible, the words of the Constitution should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. *Verba legis non est recedendum* – from the words of a statute there should be no departure.
>
> The raison d' être for the rule is essentially two-fold: First, because it is assumed that the words in which constitutional provisions are couched express the objective sought to be attained; and second, because the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should ever be present as an important condition for the rule of law to prevail.

In conformity with the above principle, the traditional meaning of the word "conception" which, as described and defined by all reliable and reputable sources, means that life begins at fertilization.

Webster's Third New International Dictionary describes it as the act of becoming pregnant, formation of a viable zygote; the fertilization that results in a new entity capable of developing into a being like its parents.[145]

Black's Law Dictionary gives legal meaning to the term "conception" as the fecundation of the female ovum by the male spermatozoon *resulting in human life* capable of survival and maturation under normal conditions.[146]

Even in jurisprudence, an unborn child has already a legal personality. In *Continental Steel Manufacturing Corporation v. Hon. Accredited Voluntary Arbitrator Allan S. Montaño,*[147] it was written:

> Life is not synonymous with civil personality. One need not acquire civil personality first before he/she could die. **Even a child inside the womb already has life.** No less than the Constitution recognizes the **life of the unborn from conception**, that the State must protect equally with the life of the mother. If the unborn already has life, then the cessation thereof even prior to the child being delivered, qualifies as death. [Emphases in the original]

In *Gonzales v. Carhart*,[148] Justice Anthony Kennedy, writing for the US Supreme Court, said that the State "has respect for human life at all stages in the pregnancy" and "a legitimate and substantial interest in preserving and promoting fetal life." Invariably, in the decision, the fetus was referred to, or cited, as a *baby* or a *child*.[149]

Intent of the Framers

Records of the Constitutional Convention also shed light on the intention of the Framers regarding the term "conception" used in Section 12, Article II of the Constitution. From their deliberations, it clearly refers to the moment of "fertilization." The records reflect the following:

> **Rev. Rigos**: In Section 9, page 3, there is a sentence which reads:
>
> > "The State shall equally protect the life of the mother and the life of the unborn from the moment of conception."
> >
> > When is the moment of conception?
> >
> > xxx
>
> **Mr. Villegas**: As I explained in the sponsorship speech, it is **when the ovum is fertilized by the sperm that there is human life**. x x x.[150]
>
> xxx

As to why conception is reckoned from fertilization and, as such, the beginning of human life, it was explained:

> **Mr. Villegas**: I propose to review this issue in a biological manner. The first question that needs to be answered is: Is the fertilized ovum alive? Biologically categorically says yes, the fertilized ovum is alive. First of all, like all living organisms, it takes in nutrients which it processes by itself. It begins doing this upon fertilization. Secondly, as it takes in these nutrients, it grows from within. Thirdly, it multiplies itself at a geometric rate in the continuous process of cell division. All these processes are vital signs of life. Therefore, there is no question that biologically the fertilized ovum has life.
>
> The second question: Is it human? Genetics gives an equally categorical "yes." At the moment of conception, the nuclei of the ovum and the sperm rupture. As this happens 23 chromosomes from the ovum combine with 23 chromosomes of the sperm to form a total of 46 chromosomes. A chromosome count of 46 is found only – and I repeat, only in human cells. Therefore, the fertilized ovum is human.
>
> Since these questions have been answered affirmatively, we must conclude that if the fertilized ovum is both alive and human, then, as night follows day, it must be human life. Its nature is human.[151]

Why the Constitution used the phrase "from the moment of conception" and not "from the moment of fertilization" was not because of doubt when human life begins, but rather, because:

> **Mr. Tingson**: x x x x the phrase from the moment of conception" was described by us here before with the scientific phrase "fertilized ovum" may be beyond the comprehension of some people; we want to use the simpler phrase "from the moment of conception."[152]

Thus, in order to ensure that the fertilized ovum is given ample protection under the Constitution, it was discussed:

> **Rev. Rigos**: Yes, we think that the word "unborn" is sufficient for the purpose of writing a Constitution, without specifying "from the moment of conception."
>
> **Mr. Davide**: I would not subscribe to that particular view because according to the Commissioner's own admission, he would leave it to Congress to define when life begins. So, Congress can define life to begin from six months after fertilization; and that would really be very, very, dangerous. It is now determined by science that life begins from the moment of conception. There can be no doubt about it. So we should not give any doubt to Congress, too.[153]

Upon further inquiry, it was asked:

> **Mr. Gascon**: Mr. Presiding Officer, I would like to ask a question on that point. Actually, that is one of the questions I was going to raise during the period of interpellations but it has been expressed already. The provision, as proposed right now states:

> The State shall equally protect the life of the mother and the life of the unborn from the moment of conception.
>
> **When it speaks of "from the moment of conception," does this mean when the egg meets the sperm?**
>
> **Mr. Villegas: Yes, the ovum is fertilized by the sperm.**
>
> **Mr. Gascon**: Therefore that does not leave to Congress the right to determine whether certain contraceptives that we know today are abortifacient or not because it is a fact that some of the so-called contraceptives deter the rooting of the ovum in the uterus. If fertilization has already occurred, the next process is for the fertilized ovum to travel towards the uterus and to take root. **What happens with some contraceptives is that they stop the opportunity for the fertilized ovum to reach the uterus. Therefore, if we take the provision as it is proposed, these so called contraceptives should be banned.**
>
> **Mr. Villegas:** Yes, if that physical fact is established, then that is what is called abortifacient and, therefore, would be unconstitutional and should be banned under this provision.
>
> **Mr. Gascon:** Yes. So my point is that I do not think it is up to Congress to state whether or not these certain contraceptives are abortifacient. Scientifically and based on the provision as it is now proposed, they are already considered abortifacient.[154]

From the deliberations above-quoted, it is apparent that the Framers of the Constitution emphasized that the State shall provide equal protection to both the mother and the unborn child **from the earliest opportunity of life,** that is, **upon fertilization** or upon the union of the male sperm and the female ovum. It is also apparent is that the Framers of the Constitution intended that to prohibit Congress from enacting measures that would allow it determine when life begins.

Equally apparent, however, is that the Framers of the Constitution did not intend to ban all contraceptives for being unconstitutional. In fact, Commissioner Bernardo Villegas, spearheading the need to have a constitutional provision on the right to life, recognized that the determination of whether a contraceptive device is an abortifacient is a question of fact which should be left to the courts to decide on based on established evidence.[155] From the discussions above, contraceptives that kill or destroy the fertilized ovum should be deemed an abortive and thus prohibited. Conversely, contraceptives that actually prevent the union of the male sperm and the female ovum, and those that similarly take action ***prior to fertilization*** should be deemed non-abortive, and thus, constitutionally permissible.

As emphasized by the Framers of the Constitution:

xxx xxx xxx xxx

> Mr. Gascon: x x x x. As I mentioned in my speech on the US bases, I am pro-life, to the point that I would like not only to protect the life of the unborn, but also the lives of the millions of people in the world by fighting for a nuclear-free world. I would just like to be assured of the legal and pragmatic implications of the term "protection of the life of the unborn from the moment of conception." I raised some of these implications this afternoon when I interjected in the interpellation of Commissioner Regalado. I would like to ask that question again for a categorical answer.
>
> I mentioned that if we institutionalize the term "the life of the unborn from the moment of conception" we are also actually saying "no," not "maybe," to certain contraceptives which are already being encouraged at this point in time. Is that the sense of the committee or does it disagree with me?
>
> **Mr. Azcuna**: **No, Mr. Presiding Officer, because contraceptives would be preventive. There is no unborn yet. That is yet unshaped.**
>
> **Mr. Gascon**: Yes, Mr. Presiding Officer, but I was speaking more about some contraceptives, such as the intra-uterine device which actually stops the egg which has already been fertilized from taking route to the uterus. So if we say "from the moment of conception," what really occurs is that some of these contraceptives will have to be unconstitutionalized.
>
> **Mr. Azcuna**: **Yes, to the extent that it is after the fertilization.**
>
> **Mr. Gascon**: Thank you, Mr. Presiding Officer.[156]

The fact that not all contraceptives are prohibited by the 1987 Constitution is even admitted by petitioners during the oral arguments. There it was conceded that tubal ligation, vasectomy, even condoms are not classified as abortifacients.[157]

Atty. Noche:
Before the union of the eggs, egg and the sperm, there is no life yet.

Justice Bersamin:
There is no life.

Atty. Noche:
So, there is no life to be protected.

Justice Bersamin:
To be protected.

Atty. Noche:
Under Section 12, yes.

Justice Bersamin:
So you have no objection to condoms?

Atty. Noche:
Not under Section 12, Article II.

Justice Bersamin:
Even if there is already information that condoms sometimes have porosity?

Atty. Noche:
Well, yes, Your Honor, there are scientific findings to that effect, Your Honor, but I am discussing here Section 12, Article II, Your Honor, yes.

Justice Bersamin:
Alright.

Atty. Noche:
And it's not, I have to admit it's not an abortifacient, Your Honor.[158]

Medical Meaning

That conception begins at fertilization is not bereft of medical foundation. *Mosby's Medical, Nursing, and Allied Health Dictionary* defines conception as "the beginning of pregnancy usually taken to be **the instant** a spermatozoon enters an ovum and forms a viable zygote."[159] It describes fertilization as "the union of male and female gametes to form a zygote from which the embryo develops."[160]

The *Textbook of Obstetrics (Physiological & Pathological Obstetrics)*,[161] used by medical schools in the Philippines, also concludes that human life (human person) begins **at the moment of fertilization** with the union of the egg and the sperm resulting in the formation of a new individual, with a unique genetic composition that dictates all developmental stages that ensue.

Similarly, recent medical research on the matter also reveals that: "Human development begins after the union of male and female gametes or germ cells during a process known as fertilization (conception). Fertilization is a sequence of events that begins with the contact of a sperm (spermatozoon) with a secondary oocyte (ovum) and ends with the fusion of their pronuclei (the haploid nuclei of the sperm and ovum) and the mingling of their chromosomes to form a new cell. This fertilized ovum, known as a zygote, is a large diploid cell that is **the beginning, or primordium, of a human being.**" [162]

The authors of *Human Embryology & Teratology*[163] mirror the same position. They wrote: "Although life is a continuous process, fertilization is a critical landmark because, under ordinary circumstances, a new, genetically distinct human organism is thereby formed.... The combination of 23 chromosomes present in each pronucleus results in 46 chromosomes in the *zygote*. Thus the diploid number is restored and the embryonic genome is formed. The embryo now exists as a genetic unity."

In support of the RH Bill, ***The Philippine Medical Association*** came out with a "Paper on the Reproductive Health Bill (Responsible Parenthood Bill)" and therein concluded that:

CONCLUSION

The PMA throws its full weight in supporting the RH Bill at the same time that PMA maintains its strong position that **fertilization is sacred because it is at this stage that conception, and thus human life, begins. Human lives are**

> **sacred from the moment of conception, and that destroying those new lives is never licit**, no matter what the purported good outcome would be. In terms of biology and human embryology, a human being begins immediately **at fertilization** and after that, there is no point along the continuous line of human embryogenesis where only a "potential" human being can be posited. **Any philosophical, legal, or political conclusion cannot escape this objective scientific fact**.
>
> The scientific evidence supports the conclusion that a zygote is a human organism and that the life of a new human being commences at a scientifically well defined "moment of conception." **This conclusion is objective, consistent with the factual evidence, and independent of any specific ethical, moral, political, or religious view of human life or of human embryos.**[164]

Conclusion: The Moment of Conception is Reckoned from Fertilization

In all, whether it be taken from a plain meaning, or understood under medical parlance, and more importantly, following the intention of the Framers of the Constitution, the undeniable conclusion is that a zygote is a human organism and that the life of a new human being commences at a scientifically well-defined moment of conception, that is, **upon fertilization.**

For the above reasons, the *ponente* cannot subscribe to the theory advocated by Hon. Lagman that life begins at implantation.[165] According to him, "fertilization and conception are two distinct and successive stages in the reproductive process. They are not identical and synonymous."[166] Citing a letter of the WHO, he wrote that "medical authorities confirm that the implantation of the fertilized ovum is the commencement of conception and it is only after implantation that pregnancy can be medically detected."[167]

This theory of implantation as the beginning of life is devoid of any legal or scientific mooring. It does not pertain to the beginning of life but to the viability of the fetus. ***The fertilized ovum/zygote is not an inanimate object – it is a living human being complete with DNA and 46 chromosomes***.[168] Implantation has been conceptualized only for convenience by those who had population control in mind. To adopt it would constitute textual infidelity not only to the RH Law but also to the Constitution.

Not surprisingly, even the OSG does not support this position.

If such theory would be accepted, it would unnervingly legitimize the utilization of any drug or device that would prevent the implantation of the fetus at the uterine wall. It would be provocative and further aggravate religious-based divisiveness.

It would legally permit what the Constitution proscribes – abortion and abortifacients.

The RH Law and Abortion

The clear and unequivocal intent of the Framers of the 1987 Constitution in protecting the life of the unborn from conception was to prevent the Legislature from enacting a measure legalizing abortion. It was so clear that **even the Court cannot interpret it otherwise.** This intent of the Framers was captured in the record of the proceedings of the 1986 Constitutional Commission. Commissioner Bernardo Villegas, the principal proponent of the protection of the unborn from conception, explained:

> The **intention**…is **to make sure** that there would be **no pro-abortion** laws ever passed **by Congress** or any pro-abortion decision passed by the **Supreme Court.**[169]

A reading of the RH Law would show that it is in line with this intent and actually proscribes abortion. While the Court has opted not to make any determination, at this stage, when life begins, it finds that **the RH Law itself clearly mandates that protection be afforded from the moment of fertilization**. As pointed out by Justice Carpio, the RH Law is replete with provisions that embody the policy of the law to protect to the fertilized ovum and that it should be afforded safe travel to the uterus for implantation.[170]

Moreover, the RH Law recognizes that abortion is a crime under Article 256 of the Revised Penal Code, which penalizes the destruction or expulsion of the fertilized ovum. Thus:

> 1] x x x.
>
> Section 4. *Definition of Terms.* – For the purpose of this Act, the following terms shall be defined as follows:
>
> x x x.

(q) *Reproductive health care* refers to the access to a full range of methods, facilities, services and supplies that contribute to reproductive health and well-being by addressing reproductive health-related problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations. The elements of reproductive health care include the following:

x x x.

(3) Proscription of **abortion** and management of **abortion** complications;

x x x.

2] x x x.

Section 4. x x x.

(s) *Reproductive health rights* refers to the rights of individuals and couples, to decide freely and responsibly whether or not to have children; the number, spacing and timing of their children; to make other decisions concerning reproduction, free of discrimination, coercion and violence; to have the information and means to do so; and to attain the highest standard of sexual health and reproductive health: *Provided, however,* **That reproductive health rights do not include abortion, and access to abortifacients.**

3] x x x.

SEC. 29. *Repealing Clause*. – **Except for prevailing laws against abortion**, any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or is inconsistent with the provisions of this Act including Republic Act No. 7392, otherwise known as the Midwifery Act, is hereby repealed, modified or amended accordingly.

The RH Law and Abortifacients

In carrying out its declared policy, the RH Law is consistent in prohibiting abortifacients. To be clear, Section 4(a) of the RH Law defines an abortifacient as:

Section 4. *Definition of Terms* – x x x x

(a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA.

As stated above, the RH Law mandates that protection must be afforded from the moment of fertilization. By using the word "or," the RH Law prohibits not only drugs or devices that prevent implantation, but also those that induce abortion and those that induce the destruction of a fetus inside the mother's womb. Thus, an abortifacient is any drug or device that either:

(a) **Induces abortion;** or
(b) Induces the destruction of a fetus inside the mother's womb; or
(c) **Prevents the fertilized ovum to reach and be implanted in the mother's womb**,

upon determination of the FDA.

Contrary to the assertions made by the petitioners, the Court finds that the RH Law, consistent with the Constitution, **recognizes that the fertilized ovum already has life and that the State has a bounden duty to protect it.** The conclusion becomes clear because the RH Law, ***first,*** prohibits any drug or device that induces abortion (first kind), which, as discussed exhaustively above, refers to that which induces the killing or the destruction of the fertilized ovum, and, ***second***, prohibits any drug or device the fertilized ovum to reach and be implanted in the mother's womb (third kind).

By expressly declaring that any drug or device that prevents the fertilized ovum to reach and be implanted in the mother's womb is an abortifacient (third kind), the RH Law does not intend to mean at all that life only begins only at implantation, as Hon. Lagman suggests. It also does not declare either that protection will only be given upon implantation, as the petitioners likewise suggest. **Rather, it recognizes that: *one*, there is a need to protect the fertilized ovum which already has life, and *two*, the fertilized ovum must be protected the moment it becomes existent – all the way until it reaches and implants in the mother's womb**. After all, if life is only recognized and afforded protection from the moment the fertilized ovum implants – there is nothing to prevent any drug or device from killing or destroying the fertilized ovum prior to implantation.

From the foregoing, the Court finds that inasmuch as it affords protection to the fertilized ovum, the RH Law does not sanction abortion. To repeat, it is the Court's position that life begins at fertilization, not at implantation. When a fertilized ovum is implanted in the uterine wall, its viability is sustained but that instance of implantation is not the point of beginning of life. It started earlier. And as defined by the RH Law, **any drug or device that induces abortion, that is, which kills or destroys the fertilized ovum or prevents the fertilized ovum to reach and be implanted in the mother's womb, is an abortifacient.**

Proviso Under Section 9 of the RH Law

This notwithstanding, the Court finds that the proviso under Section 9 of the law that "any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that *it is not to be used* as an abortifacient" as **empty as it is absurd**. The FDA, with all its expertise, cannot fully attest that a drug or device will not all be used as an abortifacient, since the agency cannot be present in every instance when the contraceptive product or supply will be used.[171]

Pursuant to its declared policy of providing access only to safe, legal and non-abortifacient contraceptives, however, the Court finds that the proviso of Section 9, as worded, should bend to the legislative intent and mean that "any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that *it cannot* be used as abortifacient." Such a construction is consistent with the proviso under the second paragraph of the same section that provides:

> *Provided, further,* That the foregoing offices shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent.

Abortifacients under the RH-IRR

At this juncture, the Court agrees with ALFI that the authors of the RH-IRR gravely abused their office when they redefined the meaning of abortifacient. The RH Law defines "abortifacient" as follows:

> SEC. 4. Definition of Terms. – For the purpose of this Act, the following terms shall be defined as follows:
>
> (a) Abortifacient refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA.

Section 3.01(a) of the IRR, however, redefines "abortifacient" as:

> Section 3.01 For purposes of these Rules, the terms shall be defined as follows:
>
> a) Abortifacient refers to any drug or device that **primarily** induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the Food and Drug Administration (FDA). [Emphasis supplied]

Again in Section 3.01(j) of the RH-IRR, "contraceptive," is redefined, *viz:*

> j) *Contraceptive* refers to any safe, legal, effective and scientifically proven modern family planning method, device, or health product, whether natural or artificial, that prevents pregnancy but does not **primarily** destroy a fertilized ovum or prevent a fertilized ovum from being implanted in the mother's womb in doses of its approved indication as determined by the Food and Drug Administration (FDA).

The above-mentioned section of the RH-IRR allows "contraceptives" and recognizes as "abortifacient" only those that ***primarily*** induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb.[172]

This cannot be done.

In this regard, the observations of Justice Brion and Justice Del Castillo are well taken. As they pointed out, with the insertion of the word "primarily," Section 3.01(a) and (j) of the RH-IRR[173] must be struck down for being *ultra vires*.

Evidently, the addition of the word "primarily," in Section 3.01(a) and (j) of the RH-IRR is indeed *ultra vires*. It contravenes

Section 4(a) of the RH Law and should, therefore, be declared invalid. There is danger that the insertion of the qualifier "primarily" will pave the way for the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution. With such qualification in the RH-IRR, it appears to insinuate that a contraceptive will only be considered as an "abortifacient" if its sole known effect is abortion or, as pertinent here, the prevention of the implantation of the fertilized ovum.

For the same reason, this definition of "contraceptive" would permit the approval of contraceptives which are actually abortifacients because of their fail-safe mechanism.[174]

Also, as discussed earlier, Section 9 calls for the certification by the FDA that these contraceptives cannot act as abortive. With this, together with the definition of an abortifacient under Section 4 (a) of the RH Law and its declared policy against abortion, the undeniable conclusion is that contraceptives to be included in the PNDFS and the EDL will not only be those contraceptives that do not have the ***primary action*** of causing abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb, but also those that do not have the ***secondary action*** of acting the same way.

Indeed, consistent with the constitutional policy prohibiting abortion, and in line with the principle that laws should be construed in a manner that its constitutionality is sustained, the RH Law and its implementing rules must be consistent with each other in prohibiting abortion. Thus, the word "primarily" in Section 3.01(a) and (j) of the RH-IRR should be declared void. To uphold the validity of Section 3.01(a) and (j) of the RH-IRR and prohibit only those contraceptives that have the primary effect of being an abortive would effectively "open the floodgates to the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution."[175]

To repeat and emphasize, in all cases, the "principle of no abortion" embodied in the constitutional protection of life must be upheld.

2-The Right to Health

The petitioners claim that the RH Law violates the right to health because it requires the inclusion of hormonal contraceptives, intrauterine devices, injectables and family products and supplies in the National Drug Formulary and the inclusion of the same in the regular purchase of essential medicines and supplies of all national hospitals.[176] Citing various studies on the matter, the petitioners posit that the risk of developing **breast and cervical cancer** is greatly increased in women who use oral contraceptives as compared to women who never use them. They point out that the risk is decreased when the use of contraceptives is discontinued. Further, it is contended that the use of combined oral contraceptive pills is associated with a threefold increased risk of **venous thromboembolism**, a twofold increased risk of **ischematic stroke**, and an indeterminate effect on risk of **myocardial infarction**. [177] Given the definition of "reproductive health" and "sexual health" under Sections 4(p)[178] and (w)[179] of the RH Law, the petitioners assert that the assailed legislation only seeks to ensure that women have pleasurable and satisfying sex lives.[180]

The OSG, however, points out that Section 15, Article II of the Constitution is not self-executory, it being a mere statement of the administration's principle and policy. Even if it were self-executory, the OSG posits that medical authorities refute the claim that contraceptive pose a danger to the health of women.[181]

The Court's Position

A component to the right to life is the constitutional right to health. In this regard, the Constitution is replete with provisions protecting and promoting the right to health. Section 15, Article II of the Constitution provides:

> Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

A portion of Article XIII also specifically provides for the States' duty to provide for the health of the people, *viz*:

HEALTH

> Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.
>
> Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country's health needs and problems.

> Section 13. The State shall establish a special agency for disabled person for their rehabilitation, self-development, and self-reliance, and their integration into the mainstream of society.

Finally, Section 9, Article XVI provides:

> Section 9. The State shall protect consumers from trade malpractices and from substandard or hazardous products.

Contrary to the respondent's notion, however, these provisions are self-executing. Unless the provisions clearly express the contrary, the provisions of the Constitution should be considered self-executory. There is no need for legislation to implement these self-executing provisions.[182] In *Manila Prince Hotel v. GSIS,*[183] it was stated:

> x x x Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, **the presumption now is that all provisions of the constitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law**. This can be cataclysmic. That is why the prevailing view is, as it has always been, that —
>
> . . . in case of doubt, the Constitution should be considered self-executing rather than non-self-executing. . . . **Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective**. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute. (Emphases supplied)

This notwithstanding, it bears mentioning that the petitioners, particularly ALFI, do not question contraception and contraceptives *per se*.[184] In fact, ALFI prays that the status quo – under R.A. No. 5921 and R.A. No. 4729, the sale and distribution of contraceptives are not prohibited when they are dispensed by a prescription of a duly licensed by a physician – be maintained.[185]

The legislative intent in the enactment of the RH Law in this regard is to leave intact the provisions of R.A. No. 4729. There is no intention at all to do away with it. It is still a good law and its requirements are still in to be complied with. Thus, the Court agrees with the observation of respondent Lagman that the effectivity of the RH Law will not lead to the unmitigated proliferation of contraceptives since the sale, distribution and dispensation of contraceptive drugs and devices will still require the prescription of a licensed physician. With R.A. No. 4729 in place, **there exists adequate safeguards to ensure the public that only contraceptives that are safe are made available to the public**. As aptly explained by respondent Lagman:

> **D. Contraceptives cannot be dispensed and used without prescription**
>
> 108. As an added protection to voluntary users of contraceptives, the same cannot be dispensed and used without prescription.
>
> 109. Republic Act No. 4729 or "An Act to Regulate the Sale, Dispensation, and/or Distribution of Contraceptive Drugs and Devices" and Republic Act No. 5921 or "An Act Regulating the Practice of Pharmacy and Setting Standards of Pharmaceutical Education in the Philippines and for Other Purposes" are **not repealed** by the RH Law and the provisions of said Acts are **not inconsistent** with the RH Law.
>
> 110. Consequently, the sale, distribution and dispensation of contraceptive drugs and devices are particularly governed by RA No. 4729 which provides in full:
>
> > "Section 1. It shall be unlawful for any person, partnership, or corporation, to sell, dispense or otherwise distribute whether for or without consideration, any contraceptive drug or device, unless such sale, dispensation or distribution is by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner.
> >
> > "Sec. 2. For the purpose of this Act:
> >
> > "(a) "Contraceptive drug" is any medicine, drug, chemical, or portion which is used exclusively for the purpose of preventing fertilization of the female ovum: and
> >
> > "(b) "Contraceptive device" is any instrument, device, material, or agent introduced into the female

reproductive system for the primary purpose of preventing conception.

"Sec. 3 Any person, partnership, or corporation, violating the provisions of this Act shall be punished with a fine of not more than five hundred pesos or an imprisonment of not less than six months or more than one year or both in the discretion of the Court.

"This Act shall take effect upon its approval.

"**Approved**: June 18, 1966"

111. Of the same import, but in a general manner, Section 25 of RA No. 5921 provides:

"**Section 25**. *Sale of medicine, pharmaceuticals, drugs and devices.* No medicine, pharmaceutical, or drug of whatever nature and kind or device shall be compounded, dispensed, sold or resold, or otherwise be made available to the consuming public except through a prescription drugstore or hospital pharmacy, duly established in accordance with the provisions of this Act.

112. With all of the foregoing safeguards, as provided for in the RH Law and other relevant statutes, the pretension of the petitioners that the RH Law will lead to the unmitigated proliferation of contraceptives, whether harmful or not, is completely unwarranted and baseless.[186] [Emphases in the Original. Underlining supplied.]

In Re: Section 10 of the RH Law:

The foregoing safeguards should be read in connection with Section 10 of the RH Law which provides:

SEC. 10. *Procurement and Distribution of Family Planning Supplies.* – The DOH shall procure, distribute to LGUs and monitor the usage of family planning supplies for the whole country. The DOH shall coordinate with all appropriate local government bodies to plan and implement this procurement and distribution program. The supply and budget allotments shall be based on, among others, the current levels and projections of the following:

(a) Number of women of reproductive age and couples who want to space or limit their children;

(b) Contraceptive prevalence rate, by type of method used; and

(c) Cost of family planning supplies.

Provided, That LGUs may implement its own procurement, distribution and monitoring program consistent with the overall provisions of this Act and the guidelines of the DOH.

Thus, in the distribution by the DOH of contraceptive drugs and devices, it must consider the provisions of R.A. No. 4729, which is still in effect, and ensure that the contraceptives that it will procure shall be from a duly licensed drug store or pharmaceutical company and that the actual dispensation of these contraceptive drugs and devices will done following a prescription of a qualified medical practitioner. The distribution of contraceptive drugs and devices must not be indiscriminately done. The public health must be protected by all possible means. As pointed out by Justice De Castro, **a heavy responsibility and burden is assumed by the government in supplying contraceptive drugs and devices, for it may be held accountable for any injury, illness or loss of life resulting or incidental to their use**.[187]

At any rate, it bears pointing out that **not a single contraceptive has yet been submitted to the FDA pursuant to the RH Law**. It behooves the Court to await its determination which drugs or devices are declared by the FDA as safe, it being the agency tasked to ensure that food and medicines available to the public are safe for public consumption. Consequently, the Court finds that, at this point, the attack on the RH Law on this ground is ***premature***. Indeed, the various kinds of contraceptives must first be measured up to the constitutional yardstick as expounded herein, to be determined as the case presents itself.

At this point, the Court is of the strong view that Congress cannot legislate that hormonal contraceptives and intra-uterine devices are safe and non-abortifacient. The first sentence of Section 9 that ordains their inclusion by the National Drug Formulary in the EDL by using the mandatory "shall" is to be construed as operative only after they have been tested, evaluated, and approved by the FDA. The FDA, not Congress, has the expertise to determine whether a particular hormonal contraceptive or intrauterine device is safe and non-abortifacient. The provision of the third sentence concerning the requirements for the inclusion or removal of a particular family planning supply from the EDL supports this construction.

Stated differently, the provision in Section 9 covering the inclusion of hormonal contraceptives, intra-uterine devices, injectables, and other safe, legal, non-abortifacient and effective family planning products and supplies by the National Drug Formulary in the EDL is not mandatory. There must first be a determination by the FDA that they are in fact safe, legal, non-abortifacient and effective family planning products and supplies. There can be no predetermination by Congress that the gamut of contraceptives are "safe, legal, non-abortifacient and effective" without the proper scientific examination.

3 -Freedom of Religion and the Right to Free Speech

Position of the Petitioners:

1. On Contraception

While contraceptives and procedures like vasectomy and tubal ligation are not covered by the constitutional proscription, there are those who, because of their religious education and background, sincerely believe that contraceptives, whether abortifacient or not, are evil. Some of these are medical practitioners who essentially claim that their beliefs prohibit not only the use of contraceptives but also the willing participation and cooperation in all things dealing with contraceptive use. Petitioner PAX explained that "contraception is gravely opposed to marital chastity, it is contrary to the good of the transmission of life, and to the reciprocal self-giving of the spouses; it harms true love and denies the sovereign rule of God in the transmission of Human life."[188]

The petitioners question the State-sponsored procurement of contraceptives, arguing that the expenditure of their taxes on contraceptives violates the guarantee of religious freedom since contraceptives contravene their religious beliefs.[189]

2. On Religious Accommodation and The Duty to Refer

Petitioners Imbong and Luat note that while the RH Law attempts to address religious sentiments by making provisions for a conscientious objector, the constitutional guarantee is nonetheless violated because the law also imposes upon the conscientious objector the duty to refer the patient seeking reproductive health services to another medical practitioner who would be able to provide for the patient's needs. For the petitioners, this amounts to requiring the conscientious objector to cooperate with the very thing he refuses to do without violating his/her religious beliefs.[190]

They further argue that even if the conscientious objector's duty to refer is recognized, the recognition is unduly limited, because although it allows a conscientious objector in Section 23 (a)(3) the option to refer a patient seeking reproductive health *services and information* – no escape is afforded the conscientious objector in Section 23 (a)(1) and (2), i.e. against a patient seeking reproductive health *procedures*. They claim that the right of other individuals to conscientiously object, such as: a) those working in public health facilities referred to in Section 7; b) public officers involved in the implementation of the law referred to in Section 23(b); and c) teachers in public schools referred to in Section 14 of the RH Law, are also not recognized.[191]

Petitioner Echavez and the other medical practitioners meanwhile, contend that the requirement to refer the matter to another health care service provider is still considered a compulsion on those objecting healthcare service providers. They add that compelling them to do the act against their will violates the Doctrine of Benevolent Neutrality. Sections 9, 14 and 17 of the law are too secular that they tend to disregard the religion of Filipinos. Authorizing the use of contraceptives with abortive effects, mandatory sex education, mandatory pro-bono reproductive health services to indigents encroach upon the religious freedom of those upon whom they are required.[192]

Petitioner CFC also argues that the requirement for a conscientious objector to refer the person seeking reproductive health care services to another provider infringes on one's freedom of religion as it forces the objector to become an unwilling participant in the commission of a serious sin under Catholic teachings. While the right to act on one's belief may be regulated by the State, the acts prohibited by the RH Law are passive acts which produce neither harm nor injury to the public.[193]

Petitioner CFC adds that the RH Law does not show compelling state interest to justify regulation of religious freedom because it mentions no emergency, risk or threat that endangers state interests. It does not explain how the rights of the people (to equality, non-discrimination of rights, sustainable human development, health, education, information, choice and to make decisions according to religious convictions, ethics, cultural beliefs and the demands of responsible parenthood) are being threatened or are not being met as to justify the impairment of religious freedom.[194]

Finally, the petitioners also question Section 15 of the RH Law requiring would-be couples to attend family planning and responsible parenthood seminars and to obtain a certificate of compliance. They claim that the provision forces individuals to participate in the implementation of the RH Law even if it contravenes their religious beliefs.[195] As the assailed law dangles the threat of penalty of fine and/or imprisonment in case of non-compliance with its provisions, the petitioners claim that the RH Law forcing them to provide, support and facilitate access and information to contraception against their beliefs must be struck down as it runs afoul to the constitutional guarantee of religious freedom.

The Respondents' Positions

The respondents, on the other hand, contend that the RH Law does not provide that a specific mode or type of contraceptives be used, be it natural or artificial. It neither imposes nor sanctions any religion or belief. [196] They point out that the RH Law only seeks to serve the public interest by providing accessible, effective and quality reproductive health services to ensure maternal and child health, in line with the State's duty to bring to reality the social justice health guarantees of the Constitution,[197] and that what the law only prohibits are those acts or practices, which deprive others of their right to reproductive health.[198] They assert that the assailed law only seeks to guarantee informed choice, which is an assurance that no one will be compelled to violate his religion against his free will.[199]

The respondents add that by asserting that only natural family planning should be allowed, the petitioners are effectively going against the constitutional right to religious freedom, the same right they invoked to assail the constitutionality of the RH Law.[200] In other words, by seeking the declaration that the RH Law is unconstitutional, the petitioners are asking that the Court recognize only the Catholic Church's sanctioned natural family planning methods and impose this on the entire citizenry.[201]

With respect to the duty to refer, the respondents insist that the same does not violate the constitutional guarantee of religious freedom, it being a carefully balanced compromise between the interests of the religious objector, on one hand, who is allowed to keep silent but is required to refer – and that of the citizen who needs access to information and who has the right to expect that the health care professional in front of her will act professionally. For the respondents, the concession given by the State under Section 7 and 23(a)(3) is sufficient accommodation to the right to freely exercise one's religion without unnecessarily infringing on the rights of others.[202] Whatever burden is placed on the petitioner's religious freedom is minimal as the duty to refer is limited in duration, location and impact.[203]

Regarding mandatory family planning seminars under Section 15, the respondents claim that it is a reasonable regulation providing an opportunity for would-be couples to have access to information regarding parenthood, family planning, breastfeeding and infant nutrition. It is argued that those who object to any information received on account of their attendance in the required seminars are not compelled to accept information given to them. They are completely free to reject any information they do not agree with and retain the freedom to decide on matters of family life without intervention of the State.[204]

For their part, respondents De Venecia *et al*., dispute the notion that natural family planning is the only method acceptable to Catholics and the Catholic hierarchy. Citing various studies and surveys on the matter, they highlight the changing stand of the Catholic Church on contraception throughout the years and note the general acceptance of the benefits of contraceptives by its followers in planning their families.

The Church and The State

At the outset, it cannot be denied that we all live in a heterogeneous society. It is made up of people of diverse ethnic, cultural and religious beliefs and backgrounds. History has shown us that our government, in law and in practice, has allowed these various religious, cultural, social and racial groups to thrive in a single society together. It has embraced minority groups and is tolerant towards all – the religious people of different sects and the non-believers. The undisputed fact is that our people generally believe in a deity, whatever they conceived Him to be, and to whom they call for guidance and enlightenment in crafting our fundamental law. Thus, the preamble of the present Constitution reads:

> We, the sovereign Filipino people, ***imploring the aid of Almighty God***, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

The Filipino people in *"imploring the aid of Almighty God"* manifested their spirituality innate in our nature and consciousness as a people, shaped by tradition and historical experience. As this is embodied in the preamble, it means that the State recognizes with respect the influence of religion in so far as it instills into the mind the purest principles of morality.[205] Moreover, in recognition of the contributions of religion to society, the 1935, 1973 and 1987 constitutions contain benevolent and accommodating provisions towards religions such as tax exemption of church property, salary of religious officers in government institutions, and optional religious instructions in public schools.

The Framers, however, felt the need to put up a strong barrier so that the State would not encroach into the affairs of the church, and vice-versa. The principle of separation of Church and State was, thus, enshrined in Article II, Section 6 of the 1987 Constitution, *viz*:

> **Section 6.** The separation of Church and State shall be inviolable.

Verily, the principle of separation of Church and State is based on mutual respect. Generally, the State cannot meddle in the internal affairs of the church, much less question its faith and dogmas or dictate upon it. It cannot favor one religion and discriminate against another. On the other hand, the church cannot impose its beliefs and convictions on the State and the rest of the citizenry. It cannot demand that the nation follow its beliefs, even if it sincerely believes that they are good for the country.

Consistent with the principle that not any one religion should ever be preferred over another, the Constitution in the above-cited provision utilizes the term "church" in its generic sense, which refers to a temple, a mosque, an *iglesia*, or any other house of God which metaphorically symbolizes a religious organization. Thus, the "Church" means the religious congregations collectively.

Balancing the benefits that religion affords and the need to provide an ample barrier to protect the State from the pursuit of its secular objectives, the Constitution lays down the following mandate in Article III, Section 5 and Article VI, Section 29 (2), of the 1987 Constitution:

> **Section. 5**. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.
>
> **Section 29.**
>
> x x x.
>
> No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

In short, the constitutional assurance of religious freedom provides two guarantees: the *Establishment Clause* and the *Free Exercise Clause.*

The **establishment clause** "principally prohibits the State from sponsoring any religion or favoring any religion as against other religions. It mandates a strict neutrality in affairs among religious groups."[206] Essentially, it prohibits the establishment of a state religion and the use of public resources for the support or prohibition of a religion.

On the other hand, the basis of the **free exercise clause** is the respect for the inviolability of the human conscience.[207] Under this part of religious freedom guarantee, the State is prohibited from unduly interfering with the outside manifestations of one's belief and faith.[208] Explaining the concept of religious freedom, the Court, in *Victoriano v. Elizalde Rope Workers Union*[209] wrote:

> The constitutional provisions not only prohibits legislation for the support of any religious tenets or the modes of worship of any sect, thus forestalling compulsion by law of the acceptance of any creed or the practice of any form of worship (U.S. Ballard, 322 U.S. 78, 88 L. ed. 1148, 1153), **but also assures the free exercise of one's chosen form of religion within limits of utmost amplitude.** It has been said that the religion clauses of the Constitution are all designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good. **Any legislation whose effect or purpose is to impede the observance of one or all religions, or to discriminate invidiously between the religions, is invalid, even though the burden may be characterized as being only indirect.** (Sherbert v. Verner, 374 U.S. 398, 10 L.ed.2d 965, 83 S. Ct. 1970) But if the state regulates conduct by enacting, within its power, a general law which has for its purpose and effect to advance the state's secular goals, the statute is valid despite its indirect burden on religious observance, unless the state can accomplish its purpose without imposing such burden. (*Braunfeld v. Brown, 366 U.S. 599, 6 L ed. 2d. 563, 81 S. Ct. 144; McGowan v. Maryland, 366 U.S. 420, 444-5 and 449*).

As expounded in *Escritor*,

> The establishment and free exercise clauses were not designed to serve contradictory purposes. They have a single goal—to promote freedom of individual religious beliefs and practices. In simplest terms, the free exercise clause prohibits government from inhibiting religious beliefs with penalties for religious beliefs and practice, while the establishment clause prohibits government from inhibiting religious belief with rewards for religious beliefs and practices. In other words, the two religion clauses were intended to deny government the power to use either the carrot or the stick to influence individual religious beliefs and practices.[210]

Corollary to the guarantee of free exercise of one's religion is the principle that the guarantee of religious freedom is comprised of two parts: the freedom to believe, and the freedom to act on one's belief. The first part is absolute. As explained in *Gerona v. Secretary of Education*:[211]

> **The realm of belief and creed is infinite and limitless bounded only by one's imagination and thought. So is the freedom of belief, including religious belief, limitless and without bounds**. One may believe in most anything, however strange, bizarre and unreasonable the same may appear to others, even heretical when weighed in the scales of orthodoxy or doctrinal standards. But between the freedom of belief and the exercise of said belief, there is quite a stretch of road to travel.[212]

The second part however, is limited and subject to the awesome power of the State and can be enjoyed only with proper regard to the rights of others. It is "subject to regulation where the belief is *translated into external acts that affect the public welfare*."[213]

Legislative Acts and the
Free Exercise Clause

Thus, in case of conflict between the free exercise clause and the State, the Court adheres to the **doctrine of benevolent neutrality**. This has been clearly decided by the Court in *Estrada v. Escritor, (Escritor)*[214] where it was stated "that benevolent **neutrality-accommodation**, whether mandatory or permissive, is the spirit, intent and framework underlying the Philippine Constitution."[215] In the same case, it was further explained that"

> The **benevolent neutrality** theory believes that with respect to these governmental actions, **accommodation** of religion may be allowed, not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. "The purpose of accommodation is to remove a burden on, or facilitate the exercise of, a person's or institution's religion."[216] "What is sought under the **theory of accommodation** is not a declaration of unconstitutionality of a facially neutral law, but an exemption from its application or its 'burdensome effect,' whether by the legislature or the courts."[217]

In ascertaining the limits of the exercise of religious freedom, the compelling state interest test is proper.[218] Underlying the **compelling state interest test** is the notion that free exercise is a fundamental right and that laws burdening it should be subject to strict scrutiny.[219] In *Escritor,* it was written:

> Philippine jurisprudence articulates several tests to determine these limits. Beginning with the first case on the Free Exercise Clause, *American Bible Society*, the Court mentioned the "**clear and present danger**" test but did not employ it. Nevertheless, this test continued to be cited in subsequent cases on religious liberty. The Gerona case then pronounced that the test of permissibility of religious freedom is whether it violates the established institutions of society and law. The *Victoriano* case mentioned the "**immediate and grave danger**" test as well as the doctrine that a law of general applicability may burden religious exercise provided the law is the least restrictive means to accomplish the goal of the law. The case also used, albeit inappropriately, the "**compelling state interest**" test. After *Victoriano, German* went back to the Gerona rule. *Ebralinag* then employed the "**grave and immediate danger**" test and overruled the Gerona test. The fairly recent case of *Iglesia ni Cristo* went back to the "**clear and present danger**" test in the maiden case of *American Bible Society*. **Not surprisingly, all the cases which employed the "clear and present danger" or "grave and immediate danger" test involved, in one form or another, religious speech as this test is often used in cases on freedom of expression**. On the other hand, the *Gerona* and *German* cases set the rule that religious freedom will not prevail over established institutions of society and law. *Gerona*, however, which was the authority cited by *German* has been overruled by Ebralinag which employed the "**grave and immediate danger**" test. *Victoriano* was the only case that employed the "**compelling state interest**" test, but as explained previously, the use of the test was inappropriate to the facts of the case.
>
> The case at bar does not involve speech as in *American Bible Society, Ebralinag* and *Iglesia ni Cristo* where the "**clear and present danger**" and "**grave and immediate danger**" tests were appropriate as speech has easily discernible or immediate effects. The *Gerona* and *German doctrine,* aside from having been overruled, is not congruent with the **benevolent neutrality** approach, thus not appropriate in this jurisdiction. Similar to *Victoriano*, the present case involves purely conduct arising from religious belief. **The "compelling state interest" test is proper where conduct is involved for the whole gamut of human conduct has different effects on the state's interests: some effects may be immediate and short-term while others delayed and far-reaching**. A test that would protect the interests of the state in preventing a substantive evil, whether immediate or delayed, is therefore necessary. However, not any interest of the state would suffice to prevail over the right to religious freedom as this is a fundamental right that enjoys a preferred position in the hierarchy of rights - "the most inalienable and sacred of all human rights", in the words of Jefferson. This right is sacred for an invocation of the Free Exercise Clause is an appeal to a higher sovereignty. The entire constitutional order of limited government is premised upon an

> acknowledgment of such higher sovereignty, thus the Filipinos implore the "aid of Almighty God in order to build a just and humane society and establish a government." As held in *Sherbert*, only the gravest abuses, endangering **paramount interests** can limit this fundamental right. A mere balancing of interests which balances a right with just a colorable state interest is therefore not appropriate. Instead, **only a compelling interest of the state can prevail over the fundamental right to religious liberty. The test requires the state to carry a heavy burden, a compelling one, for to do otherwise would allow the state to batter religion, especially the less powerful ones until they are destroyed. In determining which shall prevail between the state's interest and religious liberty, reasonableness shall be the guide. The "compelling state interest" serves the purpose of revering religious liberty while at the same time affording protection to the paramount interests of the state.** This was the test used in *Sherbert* which involved conduct, *i.e.* refusal to work on Saturdays. In the end, the "compelling state interest" test, by upholding the paramount interests of the state, seeks to protect the very state, without which, religious liberty will not be preserved. [Emphases in the original. Underlining supplied.]

The Court's Position

In the case at bench, it is not within the province of the Court to determine whether the use of contraceptives or one's participation in the support of modern reproductive health measures is moral from a religious standpoint or whether the same is right or wrong according to one's dogma or belief. For the Court has declared that matters dealing with "faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church…are unquestionably ecclesiastical matters which are outside the province of the civil courts."[220] The jurisdiction of the Court extends only to public and secular morality. Whatever pronouncement the Court makes in the case at bench should be understood only in this realm where it has authority. Stated otherwise, while the Court stands without authority to rule on ecclesiastical matters, as vanguard of the Constitution, it does have authority to determine whether the RH Law contravenes the guarantee of religious freedom.

At first blush, it appears that the RH Law recognizes and respects religion and religious beliefs and convictions. It is replete with assurances the no one can be compelled to violate the tenets of his religion or defy his religious convictions against his free will. Provisions in the RH Law respecting religious freedom are the following:

> 1. The State recognizes and guarantees the human rights of all persons including their right to equality and nondiscrimination of these rights, the right to sustainable human development, the right to health which includes reproductive health, the right to education and information, and the **right to choose and make decisions for themselves in accordance with their religious convictions**, ethics, cultural beliefs, and the demands of responsible parenthood. [Section 2, Declaration of Policy]
>
> 2. The State recognizes marriage as an inviolable social institution and the foundation of the family which in turn is the foundation of the nation. Pursuant thereto, the State shall defend:
>
> > (a) **The right of spouses to found a family in accordance with their religious convictions** and the demands of responsible parenthood." [Section 2, Declaration of Policy]
>
> 3. The State shall promote and provide information and access, without bias, to all methods of family planning, including effective natural and modern methods which have been proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards such as those registered and approved by the FDA for the poor and marginalized as identified through the NHTS-PR and other government measures of identifying marginalization: Provided, That the State shall also provide funding support to promote modern natural methods of family planning, especially the Billings Ovulation Method, **consistent with the needs of acceptors and their religious convictions.** [Section 3(e), Declaration of Policy]
>
> 4. The State shall promote programs that: (1) enable individuals and couples to have the number of children they desire with due consideration to the health, particularly of women, and the resources available and affordable to them and in accordance with existing laws, public morals and their **religious convictions**. [Section 3(f)]
>
> 5. The State shall respect individuals' preferences and choice of family planning methods that are **in accordance with their religious convictions** and cultural beliefs, taking into consideration the State's obligations under various human rights instruments. [Section 3(h)]
>
> 6. Active participation by nongovernment organizations (NGOs), women's and people's organizations, civil society, **faith-based organizations, the religious** sector and communities is crucial to ensure that reproductive health and population and development policies, plans, and programs will address the priority needs of women, the poor, and the marginalized. [Section 3(i)]
>
> 7] Responsible parenthood refers to the will and ability of a parent to respond to the needs and aspirations of the family and children. It is likewise a shared responsibility between parents to determine and achieve the desired

> number of children, spacing and timing of their children according to their own family life aspirations, taking into account psychological preparedness, health status, sociocultural and economic concerns **consistent with their religious convictions**. [Section 4(v)] (Emphases supplied)

While the Constitution prohibits abortion, laws were enacted allowing the use of contraceptives. To some medical practitioners, however, the whole idea of using contraceptives is an anathema. Consistent with the principle of benevolent neutrality, their beliefs should be respected.

The Establishment Clause and Contraceptives

In the same breath that the establishment clause restricts what the government can do with religion, it also limits what religious sects can or cannot do with the government. They can neither cause the government to adopt their particular doctrines as policy for everyone, nor can they not cause the government to restrict other groups. To do so, in simple terms, would cause the State to adhere to a particular religion and, thus, establishing a state religion.

Consequently, the petitioners are misguided in their supposition that the State cannot enhance its population control program through the RH Law simply because the promotion of contraceptive use is contrary to their religious beliefs. Indeed, the State is not precluded to pursue its legitimate secular objectives without being dictated upon by the policies of any one religion. One cannot refuse to pay his taxes simply because it will cloud his conscience. The demarcation line between Church and State demands that one render unto Caesar the things that are Caesar's and unto God the things that are God's.[221]

The free exercise Clause and the Duty to Refer

While the RH Law, in espousing state policy to promote reproductive health manifestly respects diverse religious beliefs in line with the Non-Establishment Clause, the same conclusion cannot be reached with respect to Sections 7, 23 and 24 thereof. The said provisions commonly mandate that a hospital or a medical practitioner to immediately refer a person seeking health care and services under the law to another accessible healthcare provider despite their conscientious objections based on religious or ethical beliefs.

In a situation where the free exercise of religion is allegedly burdened by government legislation or practice, the **compelling state interest test** in line with the Court's espousal of the Doctrine of Benevolent Neutrality in Escritor, finds application. In this case, the conscientious objector's claim to religious freedom would warrant an exemption from obligations under the RH Law, unless the government succeeds in demonstrating a more compelling state interest in the accomplishment of an important secular objective. Necessarily so, the plea of conscientious objectors for exemption from the RH Law deserves no less than **strict scrutiny.**

In applying the test, the first inquiry is whether a conscientious objector's right to religious freedom has been burdened. As in *Escritor*, there is no doubt that an intense tug-of-war plagues a conscientious objector. One side coaxes him into obedience to the law and the abandonment of his religious beliefs, while the other entices him to a clean conscience yet under the pain of penalty. The scenario is an illustration of the predicament of medical practitioners whose religious beliefs are incongruent with what the RH Law promotes.

The Court is of the view that the obligation to refer imposed by the RH Law violates the religious belief and conviction of a conscientious objector. Once the medical practitioner, against his will, refers a patient seeking information on modern reproductive health products, services, procedures and methods, his conscience is immediately burdened as he has been compelled to perform an act against his beliefs. As Commissioner Joaquin A. Bernas (*Commissioner Bernas*) has written, "at the basis of the **free exercise clause** is the respect for the inviolability of the human conscience.[222]

Though it has been said that the act of referral is an opt-out clause, it is, however, a *false* compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive. They cannot, in conscience, do indirectly what they cannot do directly. One may not be the principal, but he is equally guilty if he abets the offensive act by indirect participation.

Moreover, the guarantee of religious freedom is necessarily intertwined with the right to free speech, it being an externalization of one's thought and conscience. This in turn includes the right to be silent. With the constitutional guarantee of religious freedom follows the protection that should be afforded to individuals in communicating their beliefs to others as well as the protection for simply being silent. The Bill of Rights guarantees the liberty of the individual to utter what is in his mind and the liberty not to utter what is not in his mind.[223] While the RH Law seeks to provide freedom of choice through informed consent, freedom of choice guarantees the liberty of the religious conscience and prohibits any degree of compulsion or burden, whether direct or indirect, in the practice of one's religion.[224]

In case of conflict between the religious beliefs and moral convictions of individuals, on one hand, and the interest of the State, on the other, to provide access and information on reproductive health products, services, procedures and methods to enable the people to determine the timing, number and spacing of the birth of their children, the Court is of the strong view that the religious

freedom of health providers, whether public or private, should be accorded primacy. Accordingly, a *conscientious objector* should be exempt from compliance with the mandates of the RH Law. If he would be compelled to act contrary to his religious belief and conviction, it would be violative of "the principle of non-coercion" enshrined in the constitutional right to free exercise of religion.

Interestingly, on April 24, 2013, Scotland's Inner House of the Court of Session, found in the case of *Doogan and Wood v. NHS Greater Glasgow and Clyde Health Board,*[225] that the midwives claiming to be conscientious objectors under the provisions of Scotland's Abortion Act of 1967, could not be required to delegate, supervise or support staff on their labor ward who were involved in abortions.[226] The Inner House stated "that if 'participation' were defined according to whether the person was taking part 'directly' or 'indirectly' this would actually mean more complexity and uncertainty."[227]

While the said case did not cover the act of referral, the applicable principle was the same – they could not be forced to assist abortions if it would be against their conscience or will.

Institutional Health Providers

The same holds true with respect to non-maternity specialty hospitals and hospitals owned and operated by a religious group and health care service providers. Considering that Section 24 of the RH Law penalizes such institutions should they fail or refuse to comply with their duty to refer under Section 7 and Section 23(a)(3), the Court deems that it must be struck down for being violative of the freedom of religion. The same applies to Section 23(a)(1) and (a)(2) in relation to Section 24, considering that in the dissemination of information regarding programs and services and in the performance of reproductive health procedures, the religious freedom of health care service providers should be respected.

In the case of Islamic Da'wah Council of the Philippines, Inc. v. Office of the Executive Secretary[228] it was stressed:

> **Freedom of religion was accorded preferred status by the framers of our fundamental law.** And this Court has consistently affirmed this preferred status, well aware that it is **"designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good."**[10]

The Court is not oblivious to the view that penalties provided by law endeavour to ensure compliance. Without set consequences for either an active violation or mere inaction, a law tends to be toothless and ineffectual. Nonetheless, when what is bartered for an effective implementation of a law is a constitutionally-protected right the Court firmly chooses to stamp its disapproval. The punishment of a healthcare service provider, who fails and/or refuses to refer a patient to another, or who declines to perform reproductive health procedure on a patient because incompatible religious beliefs, is a clear inhibition of a constitutional guarantee which the Court cannot allow.

The Implementing Rules and Regulation (RH-IRR)

The last paragraph of Section 5.24 of the RH-IRR reads:

> Provided, That **skilled health professional such as provincial, city or municipal health officers, chiefs of hospital, head nurses, supervising midwives**, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules, **cannot be considered as conscientious objectors**.

This is discriminatory and violative of the equal protection clause. The conscientious objection clause should be equally protective of the religious belief of public health officers. There is no perceptible distinction why they should not be considered exempt from the mandates of the law. The protection accorded to other conscientious objectors should equally apply to all medical practitioners without distinction whether they belong to the public or private sector. After all, the freedom to believe is intrinsic in every individual and the protective robe that guarantees its free exercise is not taken off even if one acquires employment in the government.

It should be stressed that intellectual liberty occupies a place inferior to none in the hierarchy of human values. The mind must be free to think what it wills, whether in the secular or religious sphere, to give expression to its beliefs by oral discourse or through the media and, thus, seek other candid views in occasions or gatherings or in more permanent aggrupation. Embraced in such concept then are freedom of religion, freedom of speech, of the press, assembly and petition, and freedom of association.[229]

The discriminatory provision is void not only because no such exception is stated in the RH Law itself but also because it is violative of the equal protection clause in the Constitution. Quoting respondent Lagman, if there is any conflict between the RH-IRR and the RH Law, the law must prevail.

Justice Mendoza:
I'll go to another point. The RH law…in your Comment- in-Intervention on page 52, you mentioned RH Law is replete with provisions in upholding the freedom of religion and respecting religious convictions. Earlier, you affirmed this with qualifications. Now, you have read, I presumed you have read the IRR-Implementing Rules and Regulations of the RH Bill?

Congressman Lagman:
Yes, Your Honor, I have read but I have to admit, it's a long IRR and I have not thoroughly dissected the nuances of the provisions.

Justice Mendoza:
I will read to you one provision. It's Section 5.24. This I cannot find in the RH Law. But in the IRR it says: "….skilled health professionals such as provincial, city or municipal health officers, chief of hospitals, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules, cannot be considered as conscientious objectors." Do you agree with this?

Congressman Lagman:
I will have to go over again the provisions, Your Honor.

Justice Mendoza:
In other words, public health officers in contrast to the private practitioners who can be conscientious objectors, skilled health professionals cannot be considered conscientious objectors. Do you agree with this? Is this not against the constitutional right to the religious belief?

Congressman Lagman:
Your Honor, if there is any conflict between the IRR and the law, the law must prevail.[230]

Compelling State Interest

The foregoing discussion then begets the question on whether the respondents, in defense of the subject provisions, were able to: 1] demonstrate a more compelling state interest to restrain conscientious objectors in their choice of services to render; and 2] discharge the burden of proof that the obligatory character of the law is the least intrusive means to achieve the objectives of the law.

Unfortunately, a deep scrutiny of the respondents' submissions proved to be in vain. The OSG was curiously silent in the establishment of a more compelling state interest that would rationalize the curbing of a conscientious objector's right not to adhere to an action contrary to his religious convictions. During the oral arguments, the OSG maintained the same silence and evasion. The Transcripts of the Stenographic Notes disclose the following:

Justice De Castro:
Let's go back to the duty of the conscientious objector to refer…

Senior State Solicitor Hilbay:
Yes, Justice.

Justice De Castro:
...which you are discussing awhile ago with Justice Abad. What is the compelling State interest in imposing this duty to refer to a conscientious objector which refuses to do so because of his religious belief?

Senior State Solicitor Hilbay:
Ahh, Your Honor,..

Justice De Castro:
What is the compelling State interest to impose this burden?

Senior State Solicitor Hilbay:
In the first place, Your Honor, **I don't believe that the standard is a compelling State interest**, this is an ordinary health legislation involving professionals. This is not a free speech matter or a pure free exercise matter. This is a regulation by the State of the relationship between medical doctors and their patients.[231]

Resultantly, the Court finds **no compelling state interest** which would limit the free exercise clause of the **conscientious objectors**, however few in number. Only the prevention of an immediate and grave danger to the security and welfare of the community can justify the infringement of religious freedom. If the government fails to show the seriousness and immediacy of

the threat, State intrusion is constitutionally unacceptable.[232]

> Freedom of religion means more than just the freedom to believe. It also means the freedom to act or not to act according to what one believes. And this freedom is violated when one is compelled to act against one's belief or is prevented from acting according to one's belief.[233]

Apparently, in these cases, there is **no immediate danger to the life or health** of an individual in the perceived scenario of the subject provisions. After all, a couple who plans the timing, number and spacing of the birth of their children refers to a future event that is contingent on whether or not the mother decides to adopt or use the information, product, method or supply given to her or whether she even decides to become pregnant at all. On the other hand, the burden placed upon those who object to contraceptive use is immediate and occurs the moment a patient seeks consultation on reproductive health matters.

Moreover, granting that a compelling interest exists to justify the infringement of the conscientious objector's religious freedom, the respondents have failed to demonstrate "the gravest abuses, endangering paramount interests" which could limit or override a person's fundamental right to religious freedom. Also, the respondents have not presented any government effort exerted to show that the means it takes to achieve its legitimate state objective is the **least intrusive means**.[234] Other than the assertion that the act of referring would only be momentary, considering that the act of referral by a conscientious objector is the very action being contested as violative of religious freedom, it behooves the respondents to demonstrate that no other means can be undertaken by the State to achieve its objective without violating the rights of the conscientious objector. The health concerns of women may still be addressed by other practitioners who may perform reproductive health-related procedures with open willingness and motivation. Suffice it to say, a person who is forced to perform an act in utter reluctance deserves the protection of the Court as the last vanguard of constitutional freedoms.

At any rate, there are other secular steps already taken by the Legislature to ensure that the right to health is protected. Considering other legislations as they stand now, R.A. No. 4729 or the Contraceptive Act, R.A. No. 6365 or "The Population Act of the Philippines" and R.A. No. 9710, otherwise known as "The *Magna Carta* of Women," amply cater to the needs of women in relation to health services and programs. The pertinent provision of Magna Carta on comprehensive health services and programs for women, in fact, reads:

> **Section 17.** ***Women's Right to Health.*** - (a) Comprehensive Health Services. - The State shall, at all times, provide for a comprehensive, culture-sensitive, and gender-responsive health services and programs covering all stages of a woman's life cycle and which addresses the major causes of women's mortality and morbidity: *Provided*, That in the provision for comprehensive health services, due respect shall be accorded to women's religious convictions, the rights of the spouses to found a family in accordance with their religious convictions, and the demands of responsible parenthood, and the right of women to protection from hazardous drugs, devices, interventions, and substances.
>
> Access to the following services shall be ensured:
>
> (1) Maternal care to include pre- and post-natal services to address pregnancy and infant health and nutrition;
>
> (2) Promotion of breastfeeding;
>
> (3) Responsible, ethical, legal, safe, and effective methods of family planning;
>
> (4) Family and State collaboration in youth sexuality education and health services without prejudice to the primary right and duty of parents to educate their children;
>
> (5) Prevention and management of reproductive tract infections, including sexually transmitted diseases, HIV, and AIDS;
>
> (6) Prevention and management of reproductive tract cancers like breast and cervical cancers, and other gynecological conditions and disorders;
>
> (7) Prevention of abortion and management of pregnancy-related complications;
>
> (8) In cases of violence against women and children, women and children victims and survivors shall be provided with comprehensive health services that include psychosocial, therapeutic, medical, and legal interventions and assistance towards healing, recovery, and empowerment;
>
> (9) Prevention and management of infertility and sexual dysfunction pursuant to ethical norms and medical standards;

> (10) Care of the elderly women beyond their child-bearing years; and
>
> (11) Management, treatment, and intervention of mental health problems of women and girls. In addition, healthy lifestyle activities are encouraged and promoted through programs and projects as strategies in the prevention of diseases.

> (b) Comprehensive Health Information and Education. - The State shall provide women in all sectors with appropriate, timely, complete, and accurate information and education on all the above-stated aspects of women's health in government education and training programs, with due regard to the following:
>
> (1) The natural and primary right and duty of parents in the rearing of the youth and the development of moral character and the right of children to be brought up in an atmosphere of morality and rectitude for the enrichment and strengthening of character;
>
> (2) The formation of a person's sexuality that affirms human dignity; and
>
> (3) Ethical, legal, safe, and effective family planning methods including fertility awareness.

As an afterthought, Asst. Solicitor General Hilbay eventually replied that the compelling state interest was "Fifteen maternal deaths per day, hundreds of thousands of unintended pregnancies, lives changed, x x x."[235] He, however, failed to substantiate this point by concrete facts and figures from reputable sources.

The undisputed fact, however, is that the World Health Organization reported that the Filipino maternal mortality rate dropped to 48 percent from 1990 to 2008,[236] although there was still no RH Law at that time. Despite such revelation, the proponents still insist that such number of maternal deaths constitute a compelling state interest.

Granting that there are still deficiencies and flaws in the delivery of social healthcare programs for Filipino women, they could not be solved by a measure that puts an unwarrantable stranglehold on religious beliefs in exchange for blind conformity.

Exception: Life Threatening Cases

All this notwithstanding, the Court properly recognizes a valid exception set forth in the law. While generally healthcare service providers cannot be forced to render reproductive health care procedures if doing it would contravene their religious beliefs, an **exception** must be made in **life-threatening cases** that require the performance of emergency procedures. In these situations, the right to life of the mother should be given preference, considering that a referral by a medical practitioner would amount to a denial of service, resulting to unnecessarily placing the life of a mother in grave danger. Thus, during the oral arguments, Atty. Liban, representing CFC, manifested: "the forced referral clause that we are objecting on grounds of violation of freedom of religion **does not contemplate an emergency.**"[237]

In a conflict situation between the life of the mother and the life of a child, the doctor is morally obliged always to try to save both lives. If, however, it is impossible, the resulting death to one should not be deliberate. Atty. Noche explained:

> **Principle of Double-Effect**. - May we please remind the principal author of the RH Bill in the House of Representatives of the principle of double-effect wherein intentional harm on the life of either the mother of the child is never justified to bring about a "good" effect. In a conflict situation between the life of the child and the life of the mother, the doctor is **morally obliged always to try to save both lives.** However, he can act in favor of one (not necessarily the mother) when it **is medically impossible to save both**, provided that no direct harm is intended to the other. If the above principles are observed, the loss of the child's life or the mother's life is **not intentional** and, therefore, **unavoidable**. Hence, the doctor would not be guilty of abortion or murder. The mother is never pitted against the child because both their lives are equally valuable. [238]

Accordingly, if it is necessary to save the life of a mother, procedures endangering the life of the child may be resorted to even if is against the religious sentiments of the medical practitioner. As quoted above, whatever burden imposed upon a medical practitioner in this case would have been more than justified considering the life he would be able to save.

Family Planning Seminars

Anent the requirement imposed under Section 15[239] as a condition for the issuance of a marriage license, the Court finds the same to be a reasonable exercise of police power by the government. A cursory reading of the assailed provision bares that the religious freedom of the petitioners is not at all violated. All the law requires is for would-be spouses to attend a seminar on parenthood, family planning breastfeeding and infant nutrition. It does not even mandate the type of family planning methods to be included in the seminar, whether they be natural or artificial. As correctly noted by the OSG, those who receive any

information during their attendance in the required seminars are not compelled to accept the information given to them, are completely free to reject the information they find unacceptable, and retain the freedom to decide on matters of family life without the intervention of the State.

4-The Family and the Right to Privacy

Petitioner CFC assails the RH Law because Section 23(a) (2) (i) thereof violates the provisions of the Constitution by intruding into marital privacy and autonomy. It argues that it cultivates disunity and fosters animosity in the family rather than promote its solidarity and total development.[240]

The Court cannot but agree.

The 1987 Constitution is replete with provisions strengthening the **family** as it is the **basic social institution.** In fact, one article, Article XV, is devoted entirely to the family.

ARTICLE XV
THE FAMILY

> Section 1. The State recognizes the **Filipino family** as the foundation of the nation. Accordingly, it shall **strengthen its solidarity** and actively promote its total development.
>
> Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be **protected by the State**.
>
> Section 3. The State shall defend:
>
> > The **right of spouses to found a family in accordance with their religious convictions** and the demands of responsible parenthood;
> >
> > The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development;
> >
> > The right of the family to a family living wage and income; and
> >
> > The right of families or family associations **to participate in the planning and implementation of policies and programs that affect them.**

In this case, the RH Law, in its not-so-hidden desire to control population growth, contains provisions which tend to wreck the family as a solid social institution. It bars the husband and/or the father from participating in the decision making process regarding their common future progeny. It likewise deprives the parents of their authority over their minor daughter simply because she is already a parent or had suffered a miscarriage.

The Family and Spousal Consent

Section 23(a) (2) (i) of the RH Law states:

> The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall: …
>
> (2) refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:
>
> > (i) Spousal consent in case of married persons: provided, **That in case of disagreement, the decision of the one undergoing the procedures shall prevail.** [Emphasis supplied]

The above provision refers to reproductive health procedures like tubal litigation and vasectomy which, by their very nature, should require mutual consent and decision between the husband and the wife as they affect issues intimately related to the founding of a family. Section 3, Art. XV of the Constitution espouses that the State shall defend the "right of the spouses to found a family." One person cannot found a family. The right, therefore, is shared by ***both*** spouses. In the same Section 3, their right *"to participate in the planning and implementation of policies and programs that affect them"* is equally recognized.

The RH Law cannot be allowed to infringe upon this mutual decision-making. By giving absolute authority to the spouse who would undergo a procedure, and barring the other spouse from participating in the decision would drive a wedge between the husband and wife, possibly result in bitter animosity, and endanger the marriage and the family, all for the sake of reducing the population. This would be a marked departure from the policy of the State to protect marriage as an inviolable social institution. [241]

Decision-making involving a reproductive health procedure is a private matter which belongs to the couple, not just one of them. Any decision they would reach would affect their future as a family because the size of the family or the number of their children significantly matters. The decision whether or not to undergo the procedure belongs exclusively to, and shared by, both spouses as **one cohesive unit** as they chart their own destiny. It is a **constitutionally guaranteed private right**. Unless it prejudices the State, which has not shown any compelling interest, the State should see to it that they chart their destiny together as one family.

As highlighted by Justice Leonardo-De Castro, Section 19(c) of R.A. No. 9710, otherwise known as the "Magna Carta for Women," provides that women shall have equal rights in all matters relating to marriage and family relations, including the **joint decision** on the number and spacing of their children. Indeed, responsible parenthood, as Section 3(v) of the RH Law states, is a **shared responsibility** between parents. Section 23(a)(2)(i) of the RH Law should not be allowed to betray the constitutional mandate to protect and strengthen the family by giving to only one spouse the absolute authority to decide whether to undergo reproductive health procedure.[242]

The right to chart their own destiny together falls within the protected zone of marital privacy and such state intervention would encroach into the zones of spousal privacy guaranteed by the Constitution. In our jurisdiction, the right to privacy was first recognized in *Morfe v. Mutuc*,[243] where the Court, speaking through Chief Justice Fernando, held that "the right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection."[244] Morfe adopted the ruling of the US Supreme Court in *Griswold v. Connecticut*,[245] where Justice William O. Douglas wrote:

> We deal with a right of privacy older than the Bill of Rights – older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Ironically, *Griswold* invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right to privacy of married persons. Nevertheless, it recognized the zone of privacy rightfully enjoyed by couples. Justice Douglas in *Grisworld* wrote that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy."[246]

At any rate, in case of conflict between the couple, the courts will decide.

The Family and Parental Consent

Equally deplorable is the debarment of parental consent in cases where the minor, who will be undergoing a procedure, is already a parent or has had a miscarriage. Section 7 of the RH law provides:

> SEC. 7. Access to Family Planning. – X x x.
>
> No person shall be denied information and access to family planning services, whether natural or artificial: Provided, That minors will not be allowed access to modern methods of family planning without written consent from their parents or guardian/s except **when the minor is already a parent or has had a miscarriage**.

There can be no other interpretation of this provision except that when a minor is already a parent or has had a miscarriage, the parents are **excluded** from the decision making process of the minor with regard to family planning. Even if she is not yet emancipated, the parental authority is already cut off just because there is a need to tame population growth.

It is precisely in such situations when a minor parent needs the comfort, care, advice, and guidance of her own parents. The State cannot replace her natural mother and father when it comes to providing her needs and comfort. To say that their consent is no longer relevant is clearly anti-family. It does not promote unity in the family. It is an affront to the constitutional mandate to protect and strengthen the family as an inviolable social institution.

More alarmingly, it disregards and disobeys the constitutional mandate that "the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the

Government."[247] In this regard, Commissioner Bernas wrote:

> The 1987 provision has added the adjective **"primary"** to modify the right of parents. **It imports the assertion that the right of parents is superior to that of the State**.[248] [Emphases supplied]

To insist on a rule that interferes with the right of parents to exercise parental control over their minor-child or the right of the spouses to mutually decide on matters which very well affect the very purpose of marriage, that is, the establishment of conjugal and family life, would result in the violation of one's privacy with respect to his family. It would be dismissive of the unique and strongly-held Filipino tradition of maintaining close family ties and violative of the recognition that the State affords couples entering into the special contract of marriage to as one unit in forming the foundation of the family and society.

The State cannot, without a compelling state interest, take over the role of parents in the care and custody of a minor child, whether or not the latter is already a parent or has had a miscarriage. Only a compelling state interest can justify a state substitution of their parental authority.

First Exception: Access to Information

Whether with respect to the minor referred to under the exception provided in the second paragraph of Section 7 or with respect to the consenting spouse under Section 23(a)(2)(i), a distinction must be made. There must be a differentiation between access to *information* about family planning services, on one hand, and access to the reproductive health procedures and modern family planning methods themselves, on the other. Insofar as access to information is concerned, the Court finds no constitutional objection to the acquisition of information by the minor referred to under the exception in the second paragraph of Section 7 that would enable her to take proper care of her own body and that of her unborn child. After all, Section 12, Article II of the Constitution mandates the State to protect both the life of the mother as that of the unborn child. Considering that information to enable a person to make informed decisions is essential in the protection and maintenance of ones' health, access to such information with respect to reproductive health must be allowed. In this situation, the fear that parents might be deprived of their parental control is unfounded because they are not prohibited to exercise parental guidance and control over their minor child and assist her in deciding whether to accept or reject the information received.

Second Exception: Life Threatening Cases

As in the case of the conscientious objector, an exception must be made **in life-threatening cases** that require the performance of emergency procedures. In such cases, the life of the minor who has already suffered a miscarriage and that of the spouse should not be put at grave risk simply for lack of consent. It should be emphasized that no person should be denied the appropriate medical care urgently needed to preserve the primordial right, that is, the right to life.

In this connection, the second sentence of Section 23(a)(2)(ii)[249] should be struck down. By effectively limiting the requirement of parental consent to "only in elective surgical procedures," it denies the parents their right of parental authority in cases where what is involved are "non-surgical procedures." Save for the two exceptions discussed above, and in the case of an abused child as provided in the first sentence of Section 23(a)(2)(ii), the parents should not be deprived of their constitutional right of parental authority. To deny them of this right would be an affront to the constitutional mandate to protect and strengthen the family.

5 - Academic Freedom

It is asserted that Section 14 of the RH Law, in relation to Section 24 thereof, mandating the teaching of Age-and Development-Appropriate Reproductive Health Education under threat of fine and/or imprisonment violates the principle of academic freedom. According to the petitioners, these provisions effectively force educational institutions to teach reproductive health education even if they believe that the same is not suitable to be taught to their students.[250] Citing various studies conducted in the United States and statistical data gathered in the country, the petitioners aver that the prevalence of contraceptives has led to an increase of out-of-wedlock births; divorce and breakdown of families; the acceptance of abortion and euthanasia; the "feminization of poverty"; the aging of society; and promotion of promiscuity among the youth.[251]

At this point, suffice it to state that any attack on the validity of Section 14 of the RH Law is ***premature*** because the Department of Education, Culture and Sports has yet to formulate a curriculum on age-appropriate reproductive health education. One can only speculate on the content, manner and medium of instruction that will be used to educate the adolescents and whether they will contradict the religious beliefs of the petitioners and validate their apprehensions. Thus, considering the premature nature of this particular issue, the Court declines to rule on its constitutionality or validity.

At any rate, Section 12, Article II of the 1987 Constitution provides that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and development of moral character shall receive the support of the Government. Like the 1973 Constitution and the 1935 Constitution, the 1987 Constitution affirms the State recognition of the invaluable role of parents in preparing the youth to become productive members of society. Notably, it places more importance on the role of parents in the development of their children by recognizing that said role shall be **"primary,"** that is, that the right of parents in upbringing the youth is superior to that of the State.[252]

It is also the inherent right of the State to act as *parens patriae* to aid parents in the moral development of the youth. Indeed, the Constitution makes mention of the importance of developing the youth and their important role in nation building.[253] Considering that Section 14 provides not only for the age-appropriate-reproductive health education, but also for values formation; the development of knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood, and that Rule 10, Section 11.01 of the RH-IRR and Section 4(t) of the RH Law itself provides for the teaching of responsible teenage behavior, gender sensitivity and physical and emotional changes among adolescents – the Court finds that the legal mandate provided under the assailed provision supplements, rather than supplants, the rights and duties of the parents in the moral development of their children.

Furthermore, as Section 14 also mandates that the mandatory reproductive health education program shall be developed in conjunction with parent-teacher-community associations, school officials and other interest groups, it could very well be said that it will be in line with the religious beliefs of the petitioners. By imposing such a condition, it becomes apparent that the petitioners' contention that Section 14 violates Article XV, Section 3(1) of the Constitution is without merit.[254]

While the Court notes the possibility that educators might raise their objection to their participation in the reproductive health education program provided under Section 14 of the RH Law on the ground that the same violates their religious beliefs, the Court reserves its judgment should an actual case be filed before it.

6 - Due Process

The petitioners contend that the RH Law suffers from vagueness and, thus violates the due process clause of the Constitution. According to them, Section 23 (a)(1) mentions a "private health service provider" among those who may be held punishable but does not define who is a "private health care service provider." They argue that confusion further results since Section 7 only makes reference to a "private health care institution."

The petitioners also point out that Section 7 of the assailed legislation exempts hospitals operated by religious groups from rendering reproductive health *service* and *modern family planning methods.* It is unclear, however, if these institutions are also exempt from giving reproductive health *information* under Section 23(a)(1), or from rendering reproductive health *procedures* under Section 23(a)(2).

Finally, it is averred that the RH Law punishes the withholding, restricting and providing of incorrect information, but at the same time fails to define "incorrect information."

The arguments fail to persuade.

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess 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 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.[255] Moreover, in determining whether the words used in a statute are vague, words must not only be taken in accordance with their plain meaning alone, but also in relation to other parts of the statute. It is a rule that every part of the statute must be interpreted with reference to the context, that is, every part of it must be construed together with the other parts and kept subservient to the general intent of the whole enactment.[256]

As correctly noted by the OSG, in determining the definition of "private health care service provider," reference must be made to Section 4(n) of the RH Law which defines a "public health service provider," viz:

> (n) *Public health care service provider* refers to: (1) public health care institution, which is duly licensed and accredited and devoted primarily to the maintenance and operation of facilities for health promotion, disease prevention, diagnosis, treatment and care of individuals suffering from illness, disease, injury, disability or deformity, or in need of obstetrical or other medical and nursing care; (2) public health care professional, who is a doctor of medicine, a nurse or a midwife; (3) public health worker engaged in the delivery of health care services; or (4) barangay health worker who has undergone training programs under any accredited government and NGO and who voluntarily renders primarily health care services in the community after having been accredited to function as such by the local health board in accordance with the guidelines promulgated by the Department of Health (DOH).

Further, the use of the term "private health care institution" in Section 7 of the law, instead of "private health care service provider," should not be a cause of confusion for the obvious reason that they are used synonymously.

The Court need not belabor the issue of whether the right to be exempt from being obligated to render reproductive health service and modern family planning methods, includes exemption from being obligated to give reproductive health information and to

render reproductive health procedures. Clearly, subject to the qualifications and exemptions earlier discussed, the right to be exempt from being obligated to render reproductive health service and modern family planning methods, **necessarily includes exemption** from being obligated to give reproductive health information and to render reproductive health procedures. The terms "service" and "methods" are broad enough to include the providing of information and the rendering of medical procedures.

The same can be said with respect to the contention that the RH Law punishes health care service providers who intentionally withhold, restrict and provide incorrect information regarding reproductive health programs and services. For ready reference, the assailed provision is hereby quoted as follows:

> SEC. 23. *Prohibited Acts.* – The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> (1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;

From its plain meaning, the word "incorrect" here denotes failing to agree with a copy or model or with established rules; inaccurate, faulty; failing to agree with the requirements of duty, morality or propriety; and failing to coincide with the truth.[257] On the other hand, the word "knowingly" means with awareness or deliberateness that is intentional.[258] Used together in relation to Section 23(a)(1), they connote a sense of malice and ill motive to mislead or misrepresent the public as to the nature and effect of programs and services on reproductive health. Public health and safety demand that health care service providers give their honest and correct medical information in accordance with what is acceptable in medical practice. While health care service providers are not barred from expressing their own personal opinions regarding the programs and services on reproductive health, their right must be tempered with the need to provide public health and safety. The public deserves no less.

7-Equal Protection

The petitioners also claim that the RH Law violates the equal protection clause under the Constitution as it discriminates against the poor because it makes them the primary target of the government program that promotes contraceptive use. They argue that, rather than promoting reproductive health among the poor, the RH Law introduces contraceptives that would effectively reduce the number of the poor. Their bases are the various provisions in the RH Law dealing with the poor, especially those mentioned in the guiding principles[259] and definition of terms[260] of the law.

They add that the exclusion of private educational institutions from the mandatory reproductive health education program imposed by the RH Law renders it unconstitutional.

In *Biraogo v. Philippine Truth Commission,*[261] the Court had the occasion to expound on the concept of equal protection. Thus:

> One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause, however, to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.
>
> "According to a long line of decisions, **equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed**." It "requires public bodies and institutions to treat similarly situated individuals in a similar manner." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the state's duly constituted authorities." "In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective."
>
> The equal protection clause is aimed at all official state actions, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken.
>
> It, however, **does not require the universal application of the laws to all persons or things without distinction**. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness.

> The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. "Superficial differences do not make for a valid classification."
>
> **For a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class.** "The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed. It is not necessary that the classification be made with absolute symmetry, in the sense that the members of the class should possess the same characteristics in equal degree. Substantial similarity will suffice; and as long as this is achieved, all those covered by the classification are to be treated equally. The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the non-application of the law to him."
>
> The classification must not be based on existing circumstances only, or so constituted as to preclude addition to the number included in the class. It must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. It must not leave out or "underinclude" those that should otherwise fall into a certain classification. [Emphases supplied; citations excluded]

To provide that the poor are to be given priority in the government's reproductive health care program is not a violation of the equal protection clause. In fact, it is pursuant to Section 11, Article XIII of the Constitution which recognizes the distinct necessity to address the needs of the underprivileged by providing that they be given priority in addressing the health development of the people. Thus:

> Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

It should be noted that Section 7 of the RH Law prioritizes poor and marginalized couples *who are suffering from fertility issues and desire to have children*. There is, therefore, no merit to the contention that the RH Law only seeks to target the poor to reduce their number. While the RH Law admits the use of contraceptives, it does not, as elucidated above, sanction abortion. As Section 3(l) explains, the "promotion and/or stabilization of the population growth rate is incidental to the advancement of reproductive health."

Moreover, the RH Law does not prescribe the number of children a couple may have and does not impose conditions upon couples who intend to have children. While the petitioners surmise that the assailed law seeks to charge couples with the duty to have children only if they would raise them in a truly humane way, a deeper look into its provisions shows that what the law seeks to do is to simply **provide priority** to the poor in the implementation of government programs to promote basic reproductive health care.

With respect to the exclusion of private educational institutions from the mandatory reproductive health education program under Section 14, suffice it to state that the mere fact that the children of those who are less fortunate attend public educational institutions does not amount to substantial distinction sufficient to annul the assailed provision. On the other hand, substantial distinction rests between public educational institutions and private educational institutions, particularly because there is a need to recognize the academic freedom of private educational institutions especially with respect to religious instruction and to consider their sensitivity towards the teaching of reproductive health education.

8-Involuntary Servitude

The petitioners also aver that the RH Law is constitutionally infirm as it violates the constitutional prohibition against involuntary servitude. They posit that Section 17 of the assailed legislation requiring private and non-government health care service providers to render forty-eight (48) hours of *pro bono* reproductive health services, actually amounts to involuntary servitude because it requires medical practitioners to perform acts against their will.[262]

The OSG counters that the rendition of *pro bono* services envisioned in Section 17 can hardly be considered as forced labor analogous to slavery, as reproductive health care service providers have the discretion as to the manner and time of giving *pro bono* services. Moreover, the OSG points out that the imposition is within the powers of the government, the accreditation of medical practitioners with PhilHealth being a privilege and not a right.

The point of the OSG is well-taken.

It should first be mentioned that the practice of medicine is undeniably imbued with public interest that it is both a power and a duty of the State to control and regulate it in order to protect and promote the public welfare. Like the legal profession, the practice of medicine is not a right but a privileged burdened with conditions as it directly involves the very lives of the people. A *fortiori*, this power includes the power of Congress[263] to prescribe the qualifications for the practice of professions or trades

which affect the public welfare, the public health, the public morals, and the public safety; and to regulate or control such professions or trades, even to the point of revoking such right altogether.[264]

Moreover, as some petitioners put it, the notion of involuntary servitude connotes the presence of force, threats, intimidation or other similar means of coercion and compulsion.[265] A reading of the assailed provision, however, reveals that it only *encourages* private and non-government reproductive healthcare service providers to render pro bono service. Other than non-accreditation with PhilHealth, no penalty is imposed should they choose to do otherwise. Private and non-government reproductive healthcare service providers also enjoy the liberty to choose which kind of health service they wish to provide, when, where and how to provide it or whether to provide it all. Clearly, therefore, no compulsion, force or threat is made upon them to render pro bono service against their will. While the rendering of such service was made a prerequisite to accreditation with PhilHealth, the Court does not consider the same to be an unreasonable burden, but rather, a necessary incentive imposed by Congress in the furtherance of a perceived legitimate state interest.

Consistent with what the Court had earlier discussed, however, it should be emphasized that conscientious objectors are exempt from this provision as long as their religious beliefs and convictions do not allow them to render reproductive health service, *pro bono* or otherwise.

9-Delegation of Authority to the FDA

The petitioners likewise question the delegation by Congress to the FDA of the power to determine whether or not a supply or product is to be included in the Essential Drugs List *(EDL)*.[266]

The Court finds nothing wrong with the delegation. The FDA does not only have the power but also the competency to evaluate, register and cover health services and methods. It is the only government entity empowered to render such services and highly proficient to do so. It should be understood that health services and methods fall under the gamut of terms that are associated with what is ordinarily understood as "health products." In this connection, Section 4 of R.A. No. 3720, as amended by R.A. No. 9711 reads:

> SEC. 4. To carry out the provisions of this Act, there is hereby created an office to be called the Food and Drug Administration (FDA) in the Department of Health (DOH). Said Administration shall be under the Office of the Secretary and shall have the following functions, powers and duties:
>
> "(a) To administer the effective implementation of this Act and of the rules and regulations issued pursuant to the same;
>
> "(b) To assume primary jurisdiction in the collection of samples of health products;
>
> "(c) **To analyze and inspect health products** in connection with the implementation of this Act;
>
> "(d) To establish analytical data to serve as basis for the preparation of health products standards, and to recommend standards of identity, purity, safety, efficacy, quality and fill of container;
>
> "(e) To issue certificates of compliance with technical requirements to serve as basis for the issuance of appropriate authorization and spot-check for compliance with regulations regarding operation of manufacturers, importers, exporters, distributors, wholesalers, drug outlets, and other establishments and facilities of health products, as determined by the FDA;
>
> "x x x
>
> "(h) **To conduct appropriate tests on all applicable health products prior to the issuance of appropriate authorizations to ensure safety, efficacy, purity, and quality;**
>
> "(i) To require all manufacturers, traders, distributors, importers, exporters, wholesalers, retailers, consumers, and non-consumer users of health products to report to the FDA any incident that reasonably indicates that said product has caused or contributed to the death, serious illness or serious injury to a consumer, a patient, or any person;
>
> "(j) To issue cease and desist orders *motu propio* or upon verified complaint for health products, whether or not registered with the FDA *Provided*, That for registered health products, the cease and desist order is valid for thirty (30) days and may be extended for sixty (60) days only after due process has been observed;
>
> "(k) **After due process, to order the ban, recall, and/or withdrawal of any health product found to have caused death, serious illness or serious injury to a consumer or patient, or is found to be imminently injurious, unsafe, dangerous, or grossly deceptive**, and to require all concerned to implement the risk management plan which is a requirement for the issuance of the appropriate authorization;
>
> x x x.

As can be gleaned from the above, the functions, powers and duties of the FDA are specific to enable the agency to carry out the mandates of the law. Being the country's premiere and sole agency that ensures the safety of food and medicines available to the public, the FDA was equipped with the necessary powers and functions to make it effective. Pursuant to the principle of necessary implication, the mandate by Congress to the FDA to ensure public health and safety by permitting only food and medicines that are safe includes "service" and "methods." From the declared policy of the RH Law, it is clear that Congress intended that the public be given only those medicines that are proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards. The philosophy behind the permitted delegation was explained in *Echagaray v. Secretary of Justice*,[267] as follows:

> The reason is the increasing complexity of the task of the government and the growing inability of the legislature to cope directly with the many problems demanding its attention. The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present day undertakings, the legislature may not have the competence, let alone the interest and the time, to provide the required direct and efficacious, not to say specific solutions.

10- Autonomy of Local Governments and the Autonomous Region of Muslim Mindanao (ARMM)

As for the autonomy of local governments, the petitioners claim that the RH Law infringes upon the powers devolved to local government units *(LGUs)* under Section 17 of the Local Government Code. Said Section 17 vested upon the LGUs the duties and functions pertaining to the delivery of basic services and facilities, as follows:

> SECTION 17. Basic Services and Facilities. –
>
> (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.
>
> (b) Such basic services and facilities include, but are not limited to, x x x.

While the aforementioned provision charges the LGUs to take on the functions and responsibilities that have already been devolved upon them from the national agencies on the aspect of providing for basic services and facilities in their respective jurisdictions, **paragraph (c) of the same provision provides a categorical exception of cases involving nationally-funded projects, facilities, programs and services**.[268] Thus:

> (c) Notwithstanding the provisions of subsection (b) hereof, **public works and infrastructure projects and other facilities, programs and services funded by the National Government** under the annual General Appropriations Act, other special laws, pertinent executive orders, and those wholly or partially funded from foreign sources, **are not covered under this Section, except in those cases where the local government unit concerned is duly designated as the implementing agency** for such projects, facilities, programs and services. [Emphases supplied]

The essence of this express reservation of power by the national government is that, unless an LGU is particularly designated as the implementing agency, it has no power over a program for which funding has been provided by the national government under the annual general appropriations act, even if the program involves the delivery of basic services within the jurisdiction of the LGU.[269] A complete relinquishment of central government powers on the matter of providing basic facilities and services cannot be implied as the Local Government Code itself weighs against it.[270]

In this case, a reading of the RH Law clearly shows that whether it pertains to the establishment of health care facilities,[271] the hiring of skilled health professionals,[272] or the training of barangay health workers,[273] it will be the **national government** that will provide for the funding of its implementation. Local autonomy is not absolute. The national government still has the say when it comes to national priority programs which the local government is called upon to implement like the RH Law.

Moreover, from the use of the word "endeavor," the LGUs are merely encouraged to provide these services. There is nothing in the wording of the law which can be construed as making the availability of these services mandatory for the LGUs. For said reason, it cannot be said that the RH Law amounts to an undue encroachment by the national government upon the autonomy enjoyed by the local governments.

The ARMM

The fact that the RH Law does not intrude in the autonomy of local governments can be equally applied to the ARMM. The RH Law does not infringe upon its autonomy. Moreover, Article III, Sections 6, 10 and 11 of R.A. No. 9054, or the organic act of the ARMM, alluded to by petitioner *Tillah* to justify the exemption of the operation of the RH Law in the autonomous region, refer to the policy statements for the guidance of the regional government. These provisions relied upon by the petitioners simply delineate the powers that may be exercised by the regional government, which can, in no manner, be characterized as an abdication by the State of its power to enact legislation that would benefit the general welfare. After all, despite the veritable autonomy granted the ARMM, the Constitution and the supporting jurisprudence, as they now stand, reject the notion of *imperium et imperio* in the relationship between the national and the regional governments.[274] Except for the express and implied limitations imposed on it by the Constitution, Congress cannot be restricted to exercise its inherent and plenary power to legislate on all subjects which extends to all matters of general concern or common interest.[275]

11 - Natural Law

With respect to the argument that the RH Law violates natural law,[276] suffice it to say that the Court does not duly recognize it as a legal basis for upholding or invalidating a law. Our only guidepost is the Constitution. While every law enacted by man emanated from what is perceived as natural law, the Court is not obliged to see if a statute, executive issuance or ordinance is in conformity to it. To begin with, it is not enacted by an acceptable legitimate body. Moreover, natural laws are mere thoughts and notions on inherent rights espoused by theorists, philosophers and theologists. The jurists of the philosophical school are interested in the law as an abstraction, rather than in the actual law of the past or present.[277] Unless, a natural right has been transformed into a written law, it cannot serve as a basis to strike down a law. In *Republic v. Sandiganbayan*,[278] the very case cited by the petitioners, it was explained that the Court is not duty-bound to examine every law or action and whether it conforms with both the Constitution and natural law. Rather, natural law is to be used sparingly only in the most peculiar of circumstances involving rights inherent to man where no law is applicable.[279]

At any rate, as earlier expounded, the RH Law does not sanction the taking away of life. It does not allow abortion in any shape or form. It only seeks to enhance the population control program of the government by providing information and making non-abortifacient contraceptives more readily available to the public, especially to the poor.

Facts and Fallacies
and the Wisdom of the Law

In general, the Court does not find the RH Law as unconstitutional insofar as it seeks to provide access to medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive healthcare services, methods, devices, and supplies. As earlier pointed out, however, the religious freedom of some sectors of society cannot be trampled upon in pursuit of what the law hopes to achieve. After all, the Constitutional safeguard to religious freedom is a recognition that man stands accountable to an authority higher than the State.

In conformity with the principle of separation of Church and State, one religious group cannot be allowed to impose its beliefs on the rest of the society. Philippine modern society leaves enough room for diversity and pluralism. As such, everyone should be tolerant and open-minded so that peace and harmony may continue to reign as we exist alongside each other.

As healthful as the intention of the RH Law may be, the idea does not escape the Court that what it seeks to address is the problem of rising poverty and unemployment in the country. Let it be said that the cause of these perennial issues is not the large population but the unequal distribution of wealth. Even if population growth is controlled, poverty will remain as long as the country's wealth remains in the hands of the very few.

At any rate, population control may not be beneficial for the country in the long run. The European and Asian countries, which embarked on such a program generations ago, are now burdened with ageing populations. The number of their young workers is dwindling with adverse effects on their economy. These young workers represent a significant human capital which could have helped them invigorate, innovate and fuel their economy. These countries are now trying to reverse their programs, but they are still struggling. For one, Singapore, even with incentives, is failing.

And in this country, the economy is being propped up by remittances from our Overseas Filipino Workers. This is because we have an ample supply of young able-bodied workers. What would happen if the country would be weighed down by an ageing population and the fewer younger generation would not be able to support them? This would be the situation when our total fertility rate would go down below the replacement level of two (2) children per woman.[280]

Indeed, at the present, the country has a population problem, but the State should not use coercive measures (like the penal provisions of the RH Law against conscientious objectors) to solve it. Nonetheless, the policy of the Court is non-interference in the wisdom of a law.

> x x x. But this Court cannot go beyond what the legislature has laid down. Its duty is to say what the law is as enacted

> by the lawmaking body. That is not the same as saying what the law should be or what is the correct rule in a given set of circumstances. **It is not the province of the judiciary to look into the wisdom of the law nor to question the policies adopted by the legislative branch. Nor is it the business of this Tribunal to remedy every unjust situation that may arise from the application of a particular law. It is for the legislature to enact remedial legislation if that would be necessary in the premises**. But as always, with apt judicial caution and cold neutrality, the Court must carry out the delicate function of interpreting the law, guided by the Constitution and existing legislation and mindful of settled jurisprudence. The Court's function is therefore limited, and accordingly, must confine itself to the judicial task of saying what the law is, as enacted by the lawmaking body.[281]

Be that as it may, it bears reiterating that the RH Law is a mere compilation and *enhancement* of the prior existing contraceptive and reproductive health laws, but with coercive measures. Even if the Court decrees the RH Law as entirely unconstitutional, there will still be the Population Act (R.A. No. 6365), the Contraceptive Act (R.A. No. 4729) and the reproductive health for women or The Magna Carta of Women (R.A. No. 9710), sans the coercive provisions of the assailed legislation. All the same, the principle of "no-abortion" and "non-coercion" in the adoption of any family planning method should be maintained.

WHEREFORE, the petitions are **PARTIALLY GRANTED**. Accordingly, the Court declares R.A. No. 10354 as **NOT UNCONSTITUTIONAL** *except* with respect to the following provisions which are declared **UNCONSTITUTIONAL**:

1] Section 7 and the corresponding provision in the RH-IRR insofar as they: a) require private health facilities and non-maternity specialty hospitals and hospitals owned and operated by a religious group to refer patients, not in an emergency or life-threatening case, as defined under Republic Act No. 8344, to another health facility which is conveniently accessible; and b) allow minor-parents or minors who have suffered a miscarriage access to modern methods of family planning without written consent from their parents or guardian/s;

2] Section 23(a)(1) and the corresponding provision in the RH-IRR, particularly Section 5.24 thereof, insofar as they punish any healthcare service provider who fails and or refuses to disseminate information regarding programs and services on reproductive health regardless of his or her religious beliefs.

3] Section 23(a)(2)(i) and the corresponding provision in the RH-IRR insofar as they allow a married individual, not in an emergency or life-threatening case, as defined under Republic Act No. 8344, to undergo reproductive health procedures without the consent of the spouse;

4] Section 23(a)(2)(ii) and the corresponding provision in the RH-IRR insofar as they limit the requirement of parental consent only to elective surgical procedures.

5] Section 23(a)(3) and the corresponding provision in the RH-IRR, particularly Section 5.24 thereof, insofar as they punish any healthcare service provider who fails and/or refuses to refer a patient not in an emergency or life-threatening case, as defined under Republic Act No. 8344, to another health care service provider within the same facility or one which is conveniently accessible regardless of his or her religious beliefs;

6] Section 23(b) and the corresponding provision in the RH-IRR, particularly Section 5.24 thereof, insofar as they punish any public officer who refuses to support reproductive health programs or shall do any act that hinders the full implementation of a reproductive health program, regardless of his or her religious beliefs;

7] Section 17 and the corresponding provision in the RH-IRR regarding the rendering of *pro bono* reproductive health service in so far as they affect the conscientious objector in securing PhilHealth accreditation; and

8] Section 3.01(a) and Section 3.01 (j) of the RH-IRR, which added the qualifier "primarily" in defining abortifacients and contraceptives, as they are *ultra vires* and, therefore, null and void for contravening Section 4(a) of the RH Law and violating Section 12, Article II of the Constitution.

The Status Quo Ante Order issued by the Court on March 19, 2013 as extended by its Order, dated July 16, 2013, is hereby **LIFTED**, insofar as the provisions of R.A. No. 10354 which have been herein declared as constitutional.

SO ORDERED.

Velasco, Jr., Peralta, Bersamin, Villarama, Jr., and *Perez, JJ*., concur.
Sereno, C.J., tingnan ang aking opinyong sumasamg-ayon at sumasalungat.
Carpio, J, see concurring opinion.
Leonardo-De Castro, J., with separate concurring opinion.
Brion, J., see separate concurring opinion.
Del Castillo, J., see concurring and dissenting opinion.
Abad, J., see concurring opinion.
Reyes, and *Perlas-Bernabe, J.,* see concurring and dissenting
Leonen, J., see separate dissent.

[1] *Islamic Da'wah Council of the Philippines, Inc. v. Office of the Executive Secretary,* G.R. No. 153888, July 9, 2003; 405 SCRA 497, 504.

[2] See , last visited on November 5, 2013; See also , last visited on November 5, 2013.

[3] See , last visited on November 5, 2013; See also , last visited on November 5, 2013.

[4] See , last visited November 5, 2013; See also , last visited November 5, 2013.

[5] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 204819; *rollo* (G.R. No. 204819), pp. 3-32.

[6] With Prayer for the Urgent Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction; docketed as G.R. No. 204934; rollo (G.R. No. 204934), pp. 3-76.

[7] Also proceeding in her personal capacity a citizen and as a member of the Bar.

[8] Spouses Reynaldo S. Luistro & Rosie B. Luistro, Jose S. Sandejas & Elenita S.A. Sandejas, Arturo M. Gorrez & Marietta C. Gorrez, Salvador S. Mante, Jr. & Hazeleen L. Mante, Rolando M. Bautista & Maria Felisa S. Bautista, Desiderio Racho & Traquilina Racho, Fernand Antonio A. Tansingco & Carol Anne C. Tansingco for themselves and on behalf of their minor children, Therese Antonette C. Tansingco, Lorenzo Jose C. Tansingco, Miguel Fernando C. Tangsingco, Carlo Josemaria C. Tansingco & Juan Paolo C. Tansingco, Spouses Mariano V. Araneta & Eileen Z. Araneta for themselves and on behalf of their minor children, Ramon Carlos Z. Araneta & Maya Angelica Z. Araneta, Spouses Renato C. Castor & Mildred C. Castor for themselves and on behalf of their minor children, Renz Jeffrey C. Castor, Joseph Ramil C. Castor, John Paul C. Castor & Raphael C. Castor, Spouses Alexander R. Racho & Zara Z. Racho for themselves and on behalf of their minor children Margarita Racho, Mikaela Racho, Martin Racho, Mari Racho & Manolo Racho, Spouses Alfred R. Racho & Francine V. Racho for themselves and on behalf of their minor children Michael Racho, Mariana Racho, Rafael Racho, Maxi Racho, Chessie Racho & Laura Racho, Spouses David R. Racho & Armilyn A. Racho for themselves and on behalf of their minor child Gabriel Racho, Mindy M. Juatas and on behalf of her minor children Elijah General Juatas and Elian Gabriel Juatas, Salvacion M. Monteiro, Emily R. Laws, Joseph R. Laws & Katrina R. Laws

[9] With Prayer for Injunction; docketed as G.R. No. 204957.

[10] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 204988; rollo (G.R. No. 204988), pp. 5-35.

[11] Through and together with its president Nestor B. Lumicao, M.D.

[12] Through and together with its representative/member of the school board Dr. Rodrigo M. Alenton, M.D.

[13] Rosemarie R. Alenton, Imelda G. Ibarra, Cpa, Lovenia P. Naces, Phd., Anthony G. Nagac, Earl Anthony C. Gambe And, Marlon I. Yap.

[14] Docketed as G.R. No. 205003; Petition is entitled "Petition (To Declare As Unconstitutional Republic Act No. 10354)." The petition fails to provide any description as to nature of the suit under the Rules of Court; rollo (G.R. No. 205003), pp. 3-40.

[15] With prayer for the issuance of a Temporary Restraining Order; docketed as G.R. No. 205043; *rollo* (G.R. No. 205043), pp. 3-16.

[16] Through its vice president and co-founder, Eduardo B.Olaguer.

[17] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 205138; *rollo* (G.R. No. 205138), pp. 3-50.

[18] Through and together with its president Atty. Ricardo M. Ribo.

[19] Atty. Lino E.A. Dumas, Romeo B. Almonte, Osmundo C. Orlanes, Arsenio Z. Menor, Samuel J. Yap, Jaime F. Mateo, Rolly Siguan, Dante E. Magdangal, Michael Eugenio O. Plana, Bienvenido C. Miguel, Jr., Landrito M. Diokno And Baldomero Falcone.

[20] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; The petition fails to provide any description as to nature of the suit under the Rules of Court; docketed as G.R. No. 205478; *rollo* (G.R. No. 205478), pp. 3-26.

[21] Jacqueline H. King, M.D., Cynthia T. Domingo, M.D., Josephine Millado-Lumitao, M.D., Anthony Perez, Michael Anthony G. Mapa, Carlos Antonio Palad, Wilfredo Jose, Claire Navarro, Anna Cosio, Gabriel Dy Liacco

[22] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 205491; *rollo* (G.R. No. 205491), pp. 3-13.

[23] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 205720; rollo (G.R. No. 205720), pp. 3-90.

[24] Through and together with its executive director, Lorna Melegrito.

[25] Joselyn B. Basilio, Robert Z. Cortes, Ariel A. Crisostomo, Jeremy I. Gatdula, Cristina A. Montes, Raul Antonio A. Nidoy, Winston Conrad B. Padojinog, Rufino L. Policarpio III.

[26] Docketed as G.R. No. 206355, *rollo* (G.R. No. 206355), pp. 3-32.

[27] Through and together with its co-petitioners, Attys. Ramon Pedrosa, Cita Borromeo-Garcia, Stella Acedera, and Berteni Cataluña Causing.

[28] With prayer for a Writ of Preliminary Injunction; docketed as G.R. No. 207111; rollo (G.R. No. 207111), pp. 3-51.

[29] Mary M. Imbong, Anthony Victorio B. Lumicao, Joseph Martin Q. Verdejo, Antonio Emma R. Roxas and Lota Lat-Guerrero.

[30] With prayer for a Writ of Preliminary Injunction; docketed as G.R. No. 207172; *rollo* (G.R. No. 207172), pp. 3-56.

[31] Spouses Juan Carlos Artadi Sarmiento and Francesca Isabelle Besinga-Sarmiento, and Spouses Luis Francis A. Rodrigo, Jr. and Deborah Marie Veronica N. Rodrigo.

[32] Docketed as G.R. No. 207563; rollo (G.R. No. 207563), pp. 3-15.

[33] *Rollo* (G.R. No. 204934), pp. 138-155.

[34] *Rollo* (G.R. No. 204819), pp. 1248-1260.

[35]Petition, *Imbong v. Ochoa, rollo* (G.R. No. 204819), pp. 8-10; Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 15-25; Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo*, (G.R. No. 204988), pp. 13-15; Petition, *Olaguer v. Ona, rollo* (G.R. No. 205043), pp. 10-11; Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 8-36; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 10-13; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 11-15; Petition, *Juat v. Ochoa, rollo* (G.R. No. 207111), pp. 17-18; Petition, *Buhay Partylist (BUHAY) v. Ochoa, rollo* (G.R. No. 204819), pp. 1255-1256.

[36]Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 26-28; Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp. 15-16; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 13-14; Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 30-35.

[37] Petition, *Task Force for the Family and Life Visayas, Inc. v. Ochoa, rollo* (G.R. No. 204957), pp. 26-27; Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 39-44; Petition, *Tatad v. Office of the President, rollo* (G.R. No. 205491), pp. 8-9; Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 59-67; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 25-26.

[38] Petition, *Imbong v. Ochoa, rollo* (G.R. No. 204819), pp. 20-22; Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 34-38; Petition, Task Force for the *Family and Life Visayas, Inc. v. Ochoa, rollo* (G.R. No. 204957), pp. 26-27; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 6-7; Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 56-75; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 16-22; Petition, *Juat v. Ochoa, rollo* (G.R. No. 207111), pp.28-33; Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 12-16.

[39] Section 5.23 Skilled Health Professional as a Conscientious Objector. In order to be considered a conscientious objector, a skilled health professional shall comply with the following requirements:

a) Submission to the DOH of an affidavit stating the modern family planning methods that he or she refuses to provide and his or her reasons for objection;

b) Posting of a notice at the entrance of the clinic or place of practice, in a prominent location and using a clear/legible font, enumerating the reproductive health services he or she refuses to provide; and c) Other requirements as determined by the DOH. x x x.

Provided, That ***skilled health professionals*** who are public officers such as, but not limited to, Provincial, City, or Municipal Health Officers, medical officers, medical specialists, rural health physicians, hospital staff nurses, public health nurses, or rural health midwives, who are specifically charged with the duty to implement these Rules **cannot be considered as conscientious objectors.** x x x (Emphases Ours)

[40] Joint Memorandum, *Imbong v. Ochoa, rollo* (G.R. No. 204819), pp. 2617-2619.

[41] Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), p. 40; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp.6-7; Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), p. 81.

[42] Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 63-64; Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 20-23.

[43] Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp. 16-48; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 7-9.

[44] Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo*, (G.R. No. 204988), pp. 16-48; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 7-9.

[45] Petition, *Task Force for the Family and Life Visayas, Inc. v. Ochoa, rollo* (G.R. No. 204957), pp. 30-31; Memorandum, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 1247-1250; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 25; Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 43-45.

[46] Joint Memorandum, *Imbong v. Ochoa, rollo* (G.R. No. 204819), pp. 2626-2637; Petition, Alcantara, pp. 9-13; *rollo*, (G.R. No. 204934), pp. 146-150; Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 78-81.

[47] Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 32-34.

[48] Petition, *Imbong v. Ochoa, rollo* (G.R. No. 204819), pp. 2623-2626; Petition, Alcantara, pp.5-9; *rollo*, (G.R. No. 204934), pp. 142-148; Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp. 20-21; Petition, *Bugarin v. Office of the President, rollo* (G.R. No. 205003), pp. 14-16; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), p. 16; Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 16-20.

[49] Petition, *Imbong v. Ochoa, rollo* (G.R. No. 204819), pp. 14-19; Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 42-44; Petition, *Task Force for the Family and Life Visayas, Inc. v. Ochoa, rollo* (G.R. No. 204957), pp. 21-25; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 23-25; Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 23-28.

[50] Joint Memorandum, I*mbong v. Ochoa, rollo* (G.R. No. 204819), pp. 2571-2574; Petition, *Olaguer v. Ona, rollo* (G.R. No. 205043), pp. 11-12; Petition, T*atad v. Office of the President, rollo* (G.R. No. 205491), pp. 7-8; Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 28-32.

[51] Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 28-33; Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 37-38.

[52] Section 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof; T*ask Force for the Family and Life Visayas, Inc. v. Ochoa, rollo* (G.R. No. 204957), pp. 6-10; *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 9-10.

[53] Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 14-30.

[54] Memorandum, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 894-900; Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 45-48; Petition, *Tillah v. Executive Secretary, rollo* (G.R. No. 207563) pp. 6-12.

[55] *Rollo* (G..R. No. 204819), pp. 362-480.

[56] *Rollo* (G..R. No. 204819), pp. 195-353.

[57] *Rollo* (G..R. No. 204819), pp. 487-528.

[58] *Rollo* (G.R. No. 204934), pp. 871-1007.

[59] *Rollo* (G.R. No. 204819), pp.1306-1334; rollo, (G.R. No. 204934), pp. 98-132.

[60] *Rollo* (G.R. No. 204819), pp. 736-780.

[61] In her Motion for Leave to Intervene, Senator Pilar Juliana S. Cayetano manifested that she was adopting as her own the arguments raised by respondents Dr. Esperanza I. Cabral, Jamie Galvez-Tan, and Dr. Alberto G. Romualdez in their Petition for Intervention; See *rollo* (G..R. No. 204819), pp. 1731-1783. After being directed by the Court to file their respective memoranda, intervenors Dr. Esperanza I. Cabral, Jamie Galvez-Tan, and Dr. Alberto G. Romualdez manifested on November 18, 2013, that they were adopting the arguments raised by Congressman Lagman in his Joint Memorandum; See *rollo* (G..R. No. 204819), pp. 3061-3070. On November 26, 2013, Senator Pilar Juliana S. Cayetano filed her separate Memorandum; see, *rollo* (G.R. No. 204819), pp. 3032-3059.

[62] Resolution dated March 15, 2013.

[63] Resolution, dated July 16, 2013.

[64] In its Resolution, dated August 27, 2013, the Court required the parties to also include the following in their respective memoranda:

1. What is the relation of the first portion of Section 7 on Access to Family Planning to the theory that R.A. No. 10354 is an anti-poor program that seeks to reduce the population of the poor?
2. How is the second paragraph of the same section related to the proposition that R.A. No. 10354 encourages sex among minors?
3. In relation to Section 23 on Prohibited Acts, where in the law can you find the definition of the term 'health care service provider'? Is the definition of a 'public health care service provider' found in Section 4, paragraph (n) of the law sufficient for the Court to understand the meaning of a 'private health care service provider' or should the Court refer to the Implementing Rules and Regulations which refer to 'health care providers'?
4. With respect to 'health care providers' under the Implementing Rules and Regulations, does it make a difference that they are called 'health care providers' and not 'health care service providers'? Does the fact that there is a missing word indicate that there is a difference or that the tautology being proposed actually refers to different objects? If in the affirmative, is there enough basis to say that the law is a criminal statute that has sufficient definitions for purposes of punitive action?
5. In relation to Section 23(a)(1), how will the State be able to locate the programs and services on which the health care service provider has the duty to give information? If the terminology of 'health care service provider' includes 'private health care service provider', which includes private hospitals and private doctors, is the State duty-bound to consequently provide these providers with information on the programs and services that these providers should give information on?
6. As regards programs, is there a duty on the part of the State to provide a way by which private health care service providers can have access to information on reproductive health care programs as defined in Section 4, paragraph (r)? What is the implication of the fact that the law requires even private parties with the duty to provide information on government programs on the criminal liability of private health care service providers?
7. As regards services, what is the distinction between 'information' and 'services' considering that 'services' in different portions of the statute include providing of information?
8. What are the specific elements of every sub-group of crime in Section 23 and what are the legal bases for the determination of each element?
9. Are there existing provisions in other statutes relevant to the legal definitions found in R.A. No. 10354?
10. Why is there an exemption for the religious or conscientious objector in paragraph (3) of Section 23 and not in paragraphs (1) and (2)? What is the distinction between paragraph (3) and paragraphs (1) and (2)?
11. Section 23(a)(3) penalizes refusal to extend quality health care services and information 'on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work.' What if the refusal is not on account of one's marital status, gender, age, religious convictions, personal circumstances, or nature of work, or what if the refuser simply does not state the reason for the refusal? Will there still be a criminal liability under Section 23(a)(3)?
12. Still on Section (23)(a)(3) on referring a person to another facility or provider, is this the same or analogous to referral of a person to seek second opinion? What is the medical standard for the provision of a second opinion? In referring to another professional or service provider for a second opinion, is it the patient who is not comfortable with the opinion given by the first doctor that triggers the duty or option to refer? How is it different with the situation in Section 23(a)(3) when it is the doctor who is not comfortable about giving an opinion? Is the difference legally material?
13. How does Section 23, paragraph (c) relate to Article 134 the Labor Code which requires employers to provide family planning services?

14. Section 24 provides that in case the offender is a juridical person, the penalties in the statute shall be imposed on the president or any responsible officer. For each offense in Section 23, how will the corporate officer be made responsible if there is no actual participation by the hospital board directors or officers of such action? Does Section 24 in relation to Section 23 require corporate action? What is the situation being contemplated in the second paragraph of Section 24 before there can be accountability for criminal violations?
15. Section 7 provides that access of minors to information and family planning services must be with the written consent of parents or guardians. Is there a penalty in the law for those who will make these information and services (e.g., contraceptives) available to minors without the parent's consent? How does this relate to Section 14 which requires the Department of Education to formulate a curriculum which 'shall be used by public schools' and 'may be adopted by private schools'? Is there a penalty for teaching sex education without the parents' or guardians' written consent? Correlatively, is there a penalty for private schools which do not teach sex education as formulated by the DepEd considering the use of the word 'may'?

[65] Section 1, R.A. No. 4729

[66] Entitled "An Act Regulating the Practice of Pharmacy and Setting Standards of Pharmaceutical Education in the Philippines."

[67] See http://www.pop.org/content/coercive-population-ploys-in-philippines-1428, last visited October 17, 2013.

[68] Entitled "Revising the Population Act of Nineteen Hundred And Seventy-One."

[69] last visited October 17, 2013.

[70] Held in Cairo, Egypt from September 5–13, 1994.

[71] Section 17, R.A. 9710.

[72] See ; last accessed February 20, 2014.

[73] *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), p. 1408.

[74] Id.

[75] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 376.

[76] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 377.

[77] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 378.

[78] G.R. No. 178552, October 5, 2010, 632 SCRA 146, 166.

[79] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 385, 387-388.

[80] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), pp.381-384.

[81] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

[82] Constitution, Art. VI, Sec. 1.

[83] Constitution, Art. VII, Sec. 1.

[84] Constitution, Art. VIII, Sec. 1.

[85] Supra note 81.

[86] See *Association of Small Landowners in the Phil., Inc., et al. v. Secretary of Agrarian Reform*, 256 Phil. 777, 799 (1989).

[87] *Francisco, Jr. v. The House of Representatives,* G.R. No. 160261, November 10, 2003, citing *Angara v. Electoral Commission,* 63 Phil. 139, 158 (1936).

[88] *Garcia v. Executive Secretary,* 602 Phil. 64, 77-78 (2009).

[89] *Kida v. Senate of the Philippines,* G.R. No. 196271, October 18, 2011, 659 SCRA 270, 326-327.

[90] *Biraogo v. The Philippine Truth Commission,* G.R. No. 192935 & G.R. No. 193036, December 7, 2010, 637 SCRA 78, 177.

[91] *Tañada v. Angara,* 338 Phil. 546, 575 (1997).

[92] 453 Phil. 586 (2003).

[93] G.R. No. 188078, 25 January 2010, 611 SCRA 137.

[94] G.R No. 187167, July 16, 2011, 655 SCRA 476.

[95] *Francisco v. House of Representatives,* 460 Phil. 830, 882-883 (2003), citing Florentino P. Feliciano, The Application of Law: Some Recurring Aspects Of The Process Of Judicial Review And Decision Making, 37 AMJJUR 17, 24 (1992).

[96] *Biraogo v. Philippine Truth Commission,* G.R. No. 192935, December 7, 2010, 637 SCRA 78, 148; *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No.178552, October 5, 2010, 632 SCRA 146, 166-167; *Senate of the Philippines v. Ermita,* 522 Phil. 1, 27 (2006); *Francisco v. House of Representatives,* 460 Phil. 830, 892 (2003).

[97] Consolidated Comment, OSG, *rollo*, (G.R. No. 204819), pp. 375-376.

[98] Comment-In-Intervention, Hontiveros, et al., *rollo*, (G.R. No. 204934), pp. 106-109; Comment-In-Intervention, Cabral et al., *rollo*, (G.R. No. 204819), pp. 500-501.

[99] *Republic Telecommunications Holding, Inc. v. Santiago,* 556 Phil. 83, 91-92 (2007).

[100] *Information Technology Foundation of the Philippines v. Commission on Elections,* 499 Phil. 281, 304-305 (2005).

[101] *Lawyers Against Monopoly And Poverty (LAMP) v. The Secretary of Budget and Management,* G.R. No. 164987, April 24, 2012, 670 SCRA 373, 383.

[102] *The Province Of North Cotabato v. The Government of the Republic of the Philippines,* 589 Phil. 387, 481 (2008).

[103] Id. at 483.

[104] *Tañada v. Angara,* 338 Phil. 546, 574 (1997).

[105] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 381.

[106] See *United States v. Salerno,* 481 U.S. 739 (1987).

[107] The First Amendment of the US Constitution reads: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

[108] *Romualdez v. Commission on Elections,* 576 Phil. 357 (2008); *Romualdez v. Hon. Sandiganbayan,* 479 Phil. 265 (2004); *Estrada v. Sandiganbayan,* 421 Phil. 290 (2001).

[109] *Resolution, Romualdez v. Commission on Elections,* 594 Phil. 305, 316 (2008).

[110] Constitution, Article VIII, Section 1.

[111] Consolidated Comment, OSG, rollo (G.R. No. 204819), pp. 375-376.

[112] Consolidated Comment, OSG, rollo (G.R. No. 204819), p. 384.

[113] *Anak Mindanao Party-List Group v. The Executive Secretary,* 558 Phil. 338, 350 (2007).

[114] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000), citing *Baker v. Carr,* 369 U.S. 186 (1962).

[115] Dissenting Opinion, J. Carpio; *Romualdez v. Commission on Elections*, 576 Phil. 357, 406 (2008).

[116] *Social Justice Society (SJS) v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, 591 Phil. 393, 404 (2008); *Tatad v. Secretary of the Department of Energy,* 346 Phil 321 (1997); *De Guia v. COMELEC,* G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422.

[117] 503 Phil. 42, 53 (2005).

[118] 84 Phil. 368, 373 (1949).

[119] 464 Phil. 375, 385 (2004).

[120] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), pp. 388-389.

[121] *The Province Of North Cotabato v. The Government of the Republic of the Philippines,* supra note 102; *Ortega v. Quezon City Government,* 506 Phil. 373, 380 (2005); and *Gonzales v. Comelec*, 137 Phil. 471 (1969).

[122] Section 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

[123] Petition, *Task Force for the Family and Life Visayas, Inc. v. Ochoa, rollo* (G.R. No. 204957), pp. 6-10; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 9-10.

[124] Joint Memorandum, Lagman, rollo, (G.R. No. 204819) pp. 212-214.

[125] Consolidated Comment, OSG, *rollo* (G.R. No. 204819, pp.389-393.

[126] ALFI Memorandum, *rollo* (G..R. No. 204934), p. 1396.

[127] ALFI Memorandum, *rollo* (G..R. No. 204934), p. 1396.

[128] ALFI Memorandum, *rollo* (G..R. No. 204934), p. 1396.

[129] Cruz, Philippine Political Law, 2002 Edition, pp. 157-158; citing 82 CJS 365.

[130] Petition, *Imbong v. Ochoa, rollo* (G.R. No. 204819), pp. 8-10; Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 15-25; Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp. 13-15; Petition, *Olaguer v. Ona, rollo* (G.R. No. 205043), pp. 10-11; Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 8-36; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 10-13; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 11-15; Petition, *Juat v. Ochoa, rollo* (G.R. No. 207111), pp. 17-18; Petition, *Buhay Partylist (BUHAY) v. Ochoa, rollo* (G.R. No. 204819), pp. 1255-1256.

[131] Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 15-25; Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp. 13-15; Petition, *Olaguer v. Ona, rollo* (G.R. No. 205043), pp. 10-11; Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 8-36; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 10-13; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 11-15; Petition, *Juat v. Ochoa, rollo* (G.R. No. 207111), pp. 17-18; Petition, *Buhay Partylist (BUHAY) v. Ochoa, rollo* (G.R. No. 204819), pp. 1255-1256.

[132] Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 14-30.

[133] Memorandum, Alcantara, *rollo* (G.R. No. 204819), p. 2133; Reply, *Olaguer v. Ona, rollo* (G.R. No. 205043), pp. 339-340.

[134] Consolidated Comment, OSG, *rollo*, (G.R. No. 204819), pp. 393-396; Comment-In-Intervention, Lagman, *rollo*, (G.R. No. 204819), pp. 230-233; Comment-In-Intervention, C4RH, *rollo* (G.R. No. 204819), pp. 1091-1192; Hontiveros, *rollo* (G.R. No. 204934), pp. 111-116; Memorandum, Cayetano, , *rollo* (G.R. No. 204819), pp. 3038-3041.

[135] Consolidated Comment, OSG, *rollo*, (G.R. No. 204819), pp. 396-410.

[136] Comment-In-Intervention, Lagman, *rollo*, (G.R. No. 204819), pp. 225-342.

[137] Article 3, Universal Declaration of Human Rights.

[138] See Republic Act No. 4729, dated June 18, 1966.

[139] See http://www.pop.org/content/coercive-population-ploys-in-philippines-1428, last visited October 17, 2013.

[140] , last visited October 17, 2013.

[141]

* During the deliberation, it was agreed that the individual members of the Court can express their own views on this matter.

[142] Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 15-25; Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp. 13-15; Petition, *Olaguer v. Ona, rollo* (G.R. No. 205043), pp. 10-11; Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 8-36; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 10-13; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 11-15; Petition, *Juat v. Ochoa, rollo* (G.R. No. 207111), pp. 17-18; Petition, *Buhay Partylist (BUHAY) v. Ochoa, rollo* (G.R. No. 204819), pp. 1255-1256.

[143] Comment-In-Intervention, Lagman, *rollo,* (G.R. No. 204819), pp. 225-342.

[144] G.R. No. 202242, July 17, 2012, 676 SCRA 579.

[145] Webster's Third International Dictionary, 1993 Edition, p. 469.

[146] Black's Law Dictionary, Fifth Edition, p. 262.

[147] G.R. No. 182836, October 13, 2009, 618 Phil. 634 (2009).

[148] *Gonzales v. Carhart* (Nos. 05-380 and 05-1382), No. 05–380, 413 F. 3d 791; 05–1382, 435 F. 3d 1163,

[149] http://www.law.cornell.edu/supct/html/05-380.ZO.html, last visited February 15, 2014.

[150] Record of the Constitutional Commission, Volume 4, September 16, 1986, p. 668.

[151] Record of the Constitutional Commission, Volume 4, September 12, 1986, p. 596.

[152] Record of the Constitutional Commission, Volume 4, September 12, 1986, p. 669.

[153] Record of the Constitutional Commission, Volume 4, September 19, 1986, p. 800.

[154] Record of the Constitutional Commission, Volume 4, September 17, 1986, p. 711.

[155] Record of the Constitutional Commission, Volume 4, September 17, 1986, p. 711.

[156] Record of the Constitutional Commission, Volume 4, September 17, 1986, p. 745.

[157] TSN, July 9, 2013, pp. 23-24.

[158] Id.

[159] 4th Edition, p. 375

[160] Id, p. 609

[161] Sumpaico, Gutierrez, Luna, Pareja, Ramos and Baja-Panlilio, 2nd Edition, (2002), pp. 76-77.

[162] Moore, Persaud, Torchia, The Developing Human: Clinically Oriented Embryology, International Edition, 9th Edition (2013), pp. 1-5, 13.

[163] O'Rahilly, Ronan and Muller, Fabiola, Human Embryology & Teratology. 2nd edition. New York: Wiley-Liss, 1996, pp. 8, 29, cited at: http://www.princeton.edu/~prolife/articles/embryoquotes2.html, last visited February 15, 2014.

[164] From https://www.philippinemedicalassociation.org/downloads/circular-forms/Position-Paper-on-the-Republic-Health-Bill-%28Responsible-Parenthood-Bill%29.pdf, last visited March 26, 2014.

[165] Comment-In-Intervention, Lagman, rollo, (G.R. No. 204819), pp. 225-342.

[166] Id.

[167] Id.

[168] See , last visited April 7, 2014.

[169] Joint Memorandum of the House of Representatives and Respondent-Intervenor Rep. Edcel C. Lagman), Section 40, *Rollo,* G.R. No. 204819, p. 2343.

[170] Concurring Opinion (Justice Carpio), p. 3.

[171] See TSN, July 9, 2013, p. 100.

[172] Separate Opinion (Justice Del Castillo), pp. 17-19; Separate Opinion (Justice Brion), p. 25.

[173] Section 3.01 For purposes of these Rules, the terms shall be defined as follows:

a) Abortifacient refers to any drug or device that primarily induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the Food and Drug Administration (FDA).

x x x x

j) Contraceptive refers to any safe, legal, effective and scientifically proven modern family planning method, device, or health product, whether natural or artificial, that prevents pregnancy but does not primarily destroy a fertilized ovum or prevent a fertilized ovum from being implanted in the mother's womb in doses of its approved indication as determined by the Food and Drug Administration (FDA).

[174] Separate Opinion (Justice Del Castillo), pp. 17-19; Separate Opinion (Justice Brion), p. 25.

[175] Separate Opinion (Justice Del Castillo), p. 19.

[176] Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 26-28; Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp. 15-16; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 13-14; Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 30-35.

[177] Memorandum, *Alliance for the Family Foundation, rollo,* (G.R. No. 204934), pp. 1419-1445.

[178] Section 4. Definition of Terms. – For the purpose of this Act, the following terms shall be defined as follows:

> x x x x
>
> (p) Reproductive Health (RH) refers to the state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. This implies that people are able to have a responsible, safe, consensual and satisfying sex life, that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. This further implies that women and men attain equal relationships in matters related to sexual relations and reproduction.

[179] Section 4. *Definition of Terms*. – For the purpose of this Act, the following terms shall be defined as follows:

x x x x

(w) Sexual health refers to a state of physical, mental and social well-being in relation to sexuality. It requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free from coercion, discrimination and violence.

[180] Memorandum, Alcantara, *rollo*, (G.R. No. 204934)p. 2136; Memorandum, PAX, rollo (G.R. No. 205138), pp. 2154-2155.

[181] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), pp. 415-416.

[182] *Gamboa v. Finance Secretary,* G.R. No. 176579, June 28, 2011, 652 SCRA 690, 738-739.

[183] 335 Phil. 82 (1997).

[184] Memorandum, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), p. 1408.

[185] Id.

[186] Memorandum, Lagman, *rollo* (G.R. No. 204819), pp. 2359-2361.

[187] Separate Opinion (Justice Leonardo-De Castro) p. 54.

[188] Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 40-41.

[189] Petition, *Task Force for the Family and Life Visayas, Inc. v. Ochoa, rollo* (G.R. No. 204957), pp. 26-27; Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 39-44; Petition, *Tatad v. Office of the President, rollo* (G.R. No. 205491), pp. 8-9; Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 59-67; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 25-26.

[190] Joint Memorandum, Imbong/Luat, *rollo* (G.R. No. 204819), p. 2615.

[191] Joint Memorandum, Imbong/Luat, *rollo* (G.R. No. 204819), pp. 2616-2621.

[192] Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 6-7.

[193] Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 20-23.

[194] Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), pp. 20-23.

[195] Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 35-37.; Petition, *Millennium Saint Foundation, Inc. v. Office of the President, rollo* (G.R. No. 206355), pp. 17-18.

[196] Memorandum, Cayetano, *rollo* (G.R. No. 204819), p. 3050; Comment-in-Intervention, Cabral, *rollo* (G.R. No. 204819), p. 511.

[197] Memorandum, OSG, *rollo* (G.R. No. 204819), p. 2677.

[198] Memorandum, Cayetano, *rollo* (G.R. No. 204819), p. 3050.

[199] Joint Memorandum Lagman, *rollo* (G.R. No. 204819), p. 2361.

[200] Memorandum. C4RH, *rollo* (G.R. No. 204819), p. 2189; Memorandum, Cayetano, *rollo* (G.R. No. 204819), p. 3050-3051.

[201] Memorandum, Cayetano, *rollo* (G.R. No. 204819), p. 3050.

[202] Memorandum, OSG, *rollo* (G.R. No. 204819), p. 2677.

[203] Memorandum, OSG, *rollo* (G.R. No. 204819), p. 2679.

[204] Memorandum, OSG, *rollo* (G.R. No. 204819), p. 2679.

[205] Cruz, Philippine Political Law, 2000 ed., p. 179, citing *Justice Laurel in Engel v. Vitale,* 370 US 421

[206] Gorospe, Constitutional Law, Vol. I, p. 1007

[207] Bernas, The 1987 Constitution, 2009 Ed., p. 330

[208] Gorospe, Constitutional Law, Vol. I, p. 1066

[209] 59 SCRA 54 (1974).

[210] *Escritor v. Estrada,* A.M. No. P-02-1651, June 22, 2006, 525 Phil. 110, 140-141 (2006).

[211] 106 Phil. 2 (1959).

[212] *Gerona v. Secretary of Education,* 106 Phil. 2, 9-10 (1959).

[213] *Ebralinag v. Division Superintendent of Schools,* 219 SCRA 256 (1993), March 1, 1993.

[214] 525 Phil. 110 (2006).

[215] Id. at 137.

[216] Id. at 148.

[217] Id. at 149.

[218] Id. at 175.

[219] Id. at 168-169.

[220] *Estrada v. Escritor*, 455 Phil. 411, 560 (2003).

[221] Cruz, Constitutional Law, 2000 edition, pp. 178-179.

[222] Bernas, The 1987 Constitution, 2009 Ed., p. 330.

[223] Separate Opinion, *Cruz, Ebralinag v. Division Superintendent of Schools,* 219 SCRA 256 (1993), March 1, 1993.

[224] *Estrada v. Escritor*, supra note 220, at 537.

[225] 20130 CSIH 36.

[226] http://www.skepticink.com/tippling/2013/05/05/conscientious-objection-to-abortion-catholic-midwives-win-appeal/; last visited February 22, 2014

[227] http://ukhumanrightsblog.com/2013/05/03/conscientious-objection-to-abortion-catholic-midwives-win-appeal; last visited February 22, 2014

[228] 453 Phil. 440 (2003).

[229] Fernando on the Philippine Constitution, 1974 ed., p. 565; See Dissenting Opinion Makasiar, *Garcia v. The Faculty Admission Committee* G.R. No. L-40779, November 28, 1975.

[230] TSN, August 13, 2013, pp. 52-54.

[231] TSN, August 27, 2013, pp. 71-72

[232] *Islamic Da'wah Council of the Philippines v. Office of the Executive Secretary of the Office of the President of the Philippines,* supra note 228 at 450.

[233] http://fatherbernasblogs.blogspot.com/2011_02_01_archive.html; last visited February 15, 2014.

[234] *Estrada v. Escritor,* supra note 210.

[235] TSN, August 27, 2013, p. 130.

[236] http://www.lifenews.com/2011/09/01/philippines-sees-maternal-mortality-decline-without-abortion; last visited March 9, 2014 [Researchers from the Institute for Health Metrics and Evaluation of the University of Washington in Seattle examined maternal mortality rates in 181 countries and found the rate (the number of women's deaths per 100,000) **dropped by 81 percent in the Philippines between 1980 and 2008**. The decrease comes as the largely Catholic nation has resister efforts to legalize abortions, even though the United Nations and pro-abortion groups claim women will supposedly die in illegal abortions and increase the maternal mortality rate if abortion is prohibited.

The 2010 study, published in Lancet, shows the Philippines outpaced first-world nations like Germany, Russia and Israel — where abortions are legal — in cutting maternal mortality rates.

Meanwhile, the National Statistical Coordination Board in the Philippines, according to Spero Forum, has shown the same results. From 1990-2010, the daily maternal mortality rate dropped 21 percent, its figures indicated. The **World Health Organization** also found that the Filipino maternal mortality rate **dropped 48 percent from 1990 to 2008.**

[237] TSN, July 23, 2013, p. 23.

[238] Memorandum, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), p. 1407.

[239] SEC. 15. *Certificate of Compliance*. – No marriage license shall be issued by the Local Civil Registrar unless the applicants present a Certificate of Compliance issued for free by the local Family Planning Office certifying that they had duly received adequate instructions and information on responsible parenthood, family planning, breastfeeding and infant nutrition.

[240] Petition, *Couples for Christ Foundation, Inc. v. Ochoa, rollo* (G.R. No. 207172), p. 29.

[241] 80 CONST. Art XV, §2.

[242] Separate Opinion (Justice Leonardo-De Castro), p. 42-43.

[243] 130 Phil. 415 (1968).

[244] Id. at 436.

[245] 81 *Griswold v. Connecticut,* 381 U.S. 479, June 7, 1965.

[246] Id.

[247] Section 12, Article II, 1987 Constitution.

[248] Bernas, The 1987 Constitution, 2009 Ed., p. 85.

[249] (ii) Parental consent or that of the person exercising parental authority in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court. In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required **only** in elective **surgical procedures** and in no case shall consent be required in emergency or serious cases as defined in Republic Act No. 8344.

[250] Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 15-16.

[251] Memorandum, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 1453-1496.

[252] Records, 1986 Constitutional Convention, Volume IV, pp. 401-402.

[253] Article II, Section 13, 1987 Constitution.

[254] Petition, *Task Force for the Family and Life Visayas, Inc. v. Ochoa, rollo* (G.R. No. 204957), pp. 24-25.

[255] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* G.R. No. 178552, October 5, 2010; *People v. Nazario,* No. L-44143, August 31, 1988, 165 SCRA 186, 195.

[256] *Philippine International Trading Corporation v. COA,* G.R. No. 183517, June 22, 2010, 621 SCRA 461, 469.

[257] Webster's Third New International Dictionary, 1993 Edition, p. 1145.

[258] Webster's Third New International Dictionary, 1993 Edition, p. 1252.

[259] SEC. 3. *Guiding Principles for Implementation.* – This Act declares the following as guiding principles:

x x x x

(d) The provision of ethical and medically safe, legal, accessible, affordable, non-abortifacient, effective and quality reproductive health care services and supplies is essential in the promotion of people's right to health, especially those of women, the **poor**, and the marginalized, and shall be incorporated as a component of basic health care;

(e) The State shall promote and provide information and access, without bias, to all methods of family planning, including effective natural and modern methods which have been proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards such as those registered and approved by the FDA for the **poor** and marginalized as identified through the NHTS-PR and other government measures of identifying marginalization: *Provided*, That the State shall also provide funding support to promote modern natural methods of family planning, especially the Billings Ovulation Method, consistent with the needs of acceptors and their religious convictions;

(f) The State shall promote programs that: (1) enable individuals and couples to have the number of children they desire with due consideration to the health, particularly of women, and the resources available and affordable to them and in accordance with existing laws, public morals and their religious convictions: ***Provided*, That no one shall be deprived, for economic reasons, of the rights to have children;** (2) achieve equitable allocation and utilization of resources; (3) ensure effective partnership among national government, local government units (LGUs) and the private sector in the design, implementation, coordination, integration, monitoring and evaluation of people-centered programs to enhance the quality of life and environmental protection; (4) conduct studies to analyze demographic trends including demographic dividends from sound population policies towards sustainable human development in keeping with the principles of gender equality, protection of mothers and children, born and unborn and the promotion and protection of women's reproductive rights and health; and (5) conduct scientific studies to determine the safety and efficacy of alternative medicines and methods for reproductive health care development;

x x x x

(g) The provision of reproductive health care, information and supplies giving priority to poor beneficiaries as identified through the NHTS-PR and other government measures of identifying marginalization must be the primary responsibility of the national government consistent with its obligation to respect, protect and promote the right to health and the right to life;

x x x x

(i) Active participation by nongovernment organizations (NGOs), women's and people's organizations, civil society, faith-based organizations, the religious sector and communities is crucial to ensure that reproductive health and population and development policies, plans, and programs will address the priority needs of women, the **poor**, and the marginalized;

x x x x

(l) There shall be no demographic or population targets and the mitigation, promotion and/or stabilization of the population growth rate is incidental to the advancement of reproductive health;

x x x x

(n) The resources of the country must be made to serve the entire population, especially the poor, and allocations thereof must be adequate and effective: *Provided,* That the life of the unborn is protected;

(o) Development is a multi-faceted process that calls for the harmonization and integration of policies, plans, programs and projects that seek to uplift the quality of life of the people, more particularly the poor, the needy and the marginalized;

[260] SEC. 4. *Definition of Terms*. – For the purpose of this Act, the following terms shall be defined as follows:

x x x x

(r) *Reproductive health care program* refers to the systematic and integrated provision of reproductive health care to all citizens prioritizing women, the **poor**, marginalized and those invulnerable or crisis situations.

x x x x

(aa) Sustainable human development refers to bringing people, particularly the **poor** and vulnerable, to the center of development process, the central purpose of which is the creation of an enabling environment in which all can enjoy long, healthy and

productive lives, done in the manner that promotes their rights and protects the life opportunities of future generations and the natural ecosystem on which all life depends.

[261] *Biraogo v. The Philippine Truth Commission,* supra note 90.

[262] Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp.16-48; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 7-9.

[263] Except the practice of law which is under the supervision of the Supreme Court.

[264] *United States v. Jesus,* 31 Phil. 218, 230 (1915).

[265] Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), p. 8.

[266] With reference to Section 2, 3(E), 4(L), 9 and 19(C) of the RH Law; Petition, ALFI, *rollo* (G.R. No. 204934), pp. 28-33; Petition, *Philippine Alliance of XSeminarians (PAX) v. Ochoa, rollo* (G.R. No. 205138), pp. 37-38.

[267] 358 Phil. 410 (1998).

[268] *Pimentel, Jr. v. Executive Secretary*, G.R. No. 195770, July 17, 2012, 676 SCRA 551, 559.

[269] Id. at 559-560.

[270] Id. at 561.

[271] See Section 6, R.A. No. 10354.

[272] See Section 5, R.A. No. 10354.

[273] See Section 16, R.A. No. 1354.

[274] *Kida v. Senate of the Philippines,* G.R. No. 196271, October 18, 2011, 659 SCRA 270, 306.

[275] Id. at 305.

[276] Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 14-30.

[277] Gettel, Political Science, Revised Edition, p. 180.

[278] 454 Phil. 504 (2003).

[279] Separate Opinion, *Chief Justice Reynato S. Puno, Republic v. Sandiganbayan,* 454 Phil. 504 (2003).

[280] https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html; last visited March 21, 2014

[281] *St. Joseph's College v. St. Joseph's College Workers' Association (Samahan)*, 489 Phil. 559, 572-573 (2005) ; and *Cebu Institute of Technology v. Ople*, G.R. No. L-58870, 18 December 1987, 156 SCRA 629.

OPINYONG SUMASANG-AYON AT SUMASALUNGAT

Paunang Salita

Sa herarkiya ng mga karapatang pantao, walang hihigit pa sa karapatang mabuhay, at nasasalamin ng ating Saligang Batas ang ganitong paniniwala. Ayon dito, pantay na pangangalagaan ng pamahalaan ang buhay ng ina at ang buhay na kanyang dinadala.[1] Bakas sa adhikaing ito ang pagkilala sa malaking bahaging ginagampanan ng ina sa pagbibigay ng buhay.

Kaya't sasalungatin ko ang bigkasin ng aking mga kapatid na Mahistrado, na ang pagpapalaya sa pasiya ng may-katawan ay

kumikitil ng buhay ng kapwa-taong isisilang pa lamang. Wala sa takda ng Saligang Batas at Republic Act No. 10354 (*The Responsible Parenthood and Reproductive Health Act of 2012*), o RH Law, ang pagkitil ng buhay. Nguni't inuunawa rin nito ang karapatan ng mag-asawa na magpalaki ng kanilang pamilya ng may dangal sa buhay. Napakahalaga din sa pananaw ng Saligang Batas at ng RH Law ang kalusugan ng pamayanan, lalong-lalo na ang kalusugan ng mga ina o magiging ina ng pamayanang ito. Kaya't mahalaga na ang bawat interpretasyon ng RH Law ay ayon sa ikabubuti ng pamilyang Pilipino at kalusugan ng ina.

Naitakda na sa Saligang Batas, at alinsunod naman dito ang RH Law, na ang buhay ay pangangalagaan mula sa *conception*. Kung ano ang puntong iyon ay katanungan para sa mga dalubhasa ng siyensiya, at hindi para sa Korte Suprema. Mayroong prosesong naitakda ang RH Law kung saan kinikilala ang pangunahing kapangyarihan ng Food and Drug Administration (FDA) sa pagsusuri sa mga katangian ng isang metodo o gamot upang alamin kung ito ay gagamitin sa pagkitil ng buhay na pinagbabawal ng Saligang Batas. Maaari lamang saklawan ng Korte Suprema ang tanong na ito kung ang prosesong legal ay lumabag sa mga alituntunin ng *due process* at mga kaakibat na *procedural rules* nito. Sukdulang panghihimasok ang magtakda kami sa panahong ito kung ang mga *hormonal contraceptives* ay *abortifacient* o hindi.

Gayundin, ang may-katawan na daraan sa paglilihi, pagbubuntis at maaaring ikapeligro ng sariling buhay ay nararapat na pakinggan ng pamahalaan. Maaaring imungkahi ng kapamilya, kasama na ng kanyang asawa, ang alternatibong paraan upang harapin ang sitwasyong pangkalusugan. Nguni't sa bandang huli, ang pasiya ng may-katawan ang dapat manaig. At bagama't ang may-katawan ay wala pa sa hustong gulang, kung siya ay nabuntis na, hindi dapat hadlangan ang kanyang kakayahang humingi ng tulong ukol sa *reproductive health* kahit walang pahintulot ng kanyang magulang sapagka't nakasalalay sa ganitong kakayahan ang kanyang kalusugan at mismong buhay.

Sa panig ng mga matataas na nanunungkulan sa pamahalaan na inatasang magpatupad ng RH Law, hindi nararapat na sila ay hayaang lumabag sa katungkulang ito. Binigyan sila ng kapangyarihan ng pamahalaan upang ipatupad ang mga batas, at hindi nila maaaring gamitin ang nasabing kapangyarihan upang biguin ang mga nilalayon ng pamahalaan para sa mga mamamayan, lalo na't ang mga layuning ito ay kaugnay sa usaping pangkalusugan.

Sinusuportahan ng RH Law ang pagsulong at pangangalaga sa karapatan ng kababaihan. Ang pagkakaloob ng mabisa at mahusay na *reproductive health care services* ay ayon sa layunin nitong masiguro ang kalusugan ng mag-ina, at makapagtatag ng sapat na pamantayan alang-alang sa kapakanan ng Iahat.

Hindi maikakaila na ang paulit-ulit na pagbanggit sa mga katagang *"medically-safe, non-abortifacient, effective, legal, affordable and quality reproductive health care services, methods, devices and supplies"* sa RH Law ay di-pangkaraniwang pagpapahalaga sa buhay ng tao at ang sadyang pagwawaksi sa abortion bilang isang krimen na may karampatang parusa ayon sa ating batas.

Ang Pasanin ng *Petitioners*

Pinapalagay bilang isang paunang pag-unawa, na ang lahat ng batas ay hindi labag sa Saligang Batas o konstitusyonal.[2] Ito ay pangunahing prinsipyo na matagal nang kinikilala, kung kaya't iniiwasan ng Korte Suprema na ipawalang-bisa ang isang batas[3] bilang pagkilala sa dunong, dangal at kabayanihan ng Kongreso na gumawa nito, at sa Pangulo na nagpatibay dito.[4] Ang tungkuling magpatupad ng Saligang Batas ay hindi natatangi sa Korte Suprema; ito ay kaakibat na katungkulan ng Kongreso at ng Pangulo.[5]

Dahil ang lahat ng batas ay ipinapalagay na konstitusyonal, ang sinuman na dudulog sa Korte Suprema upang ipawalang-bisa ito ay mabigat ang susuungin. Ipapawalang-bisa lamang ng Korte Suprema ang isang batas o bahagi nito kung malinaw na maipakikita ng *petitioner* ang paglabag nito sa Saligang Batas.[6] Kinakailangang malinaw at totohanan ang mga batayan sa pagpapawalang-bisa ng batas, at hindi maaaring ang mga ito ay haka-haka lamang.[7] Saka lamang ipapawalang-bisa ng Korte Suprema ang isang batas kung malinaw na naipakita ang pagmamalabis at pagsalungat ng Kongreso sa ating Saligang Batas.[8]

Ang Pasiya ng Mayorya

Ayon sa *Decision*, ang RH Law ay konstitusyonal maliban na lamang sa mga sumusunod na bahagi nito:

1. Section 7,[9] at ang kaukulang bahagi nito sa *Implementing Rules and Regulations* (IRR) ng RH Law, sa dahilang ito ay: a) nag-uutos sa mga *non-maternity specialty hospitals* at mga ospital na pagmamayari o pinatatakbo ng mga *religious group* na agarang ituro sa pinakamalapit na *health facility* ang mga pasyenteng wala sa *emergency condition* o hindi *serious case,* ayon sa R.A. 8344, 10 na naghahangad ng serbisyo ukol sa *modern family planning methods*,11 at b) nagbibigay-daan sa mga menor de edad na may anak o nagkaroon ng *miscarriage* na makinabang sa *modern family planning methods* kahit walang pahintulot ng kanilang mga magulang;[12]

2. *Section* 23(a)(1),[13] at ang *Section* 5.24[14] ng IRR ng RH Law, sa dahilang pinarurusahan nito ang kahit sinong *health care service provider* na hindi nagpalaganap o tumangging magpalaganap ng mahalagang kaalaman kaugnay ng mga programa at serbisyo ukol sa *reproductive health*, nang walang pakundangan sa *religious beliefs* ng mga *health care service providers* na ito;

3. *Section* 23(a)(2)(i),[15] at ang kaukulang bahagi nito sa IRR ng RH Law,[16] sa dahilang nagbibigay-daan ito sa isang may

asawa na wala sa *emergency condition* o hindi *serious case* na sumailalim sa *reproductive health procedures* kahit walang pahintulot ng kanyang asawa;

4. Section 23(a)(2)(ii)[17] sa dahilang pinarurusahan nito ang *health care service provider* na hihingi ng pahintulot ng magulang bago magsagawa ng *reproductive health procedure* sa menor de edad na wala sa *emergency condition* o hindi *serious case*;

5. *Section* 23(a)(3),[18] at ang *Section* 5.24 ng IRR ng RH Law, sa dahilang pinarurusahan nito ang kahit sinong *health care service provider* na hindi nagturo o tumangging ituro sa pinakamalapit na *health facility* ang mga pasyenteng wala sa *emergency condition* o hindi *serious case* na naghahangad ng serbisyo ukol sa *modern family planning methods;*

6. *Section* 23(b),[19] at ang *Section* 5.24 ng IRR ng RH Law, sa dahilang pinarurusahan nito ang kahit sinong *public officer* na ayaw magtaguyod ng *reproductive health programs* o gagawa ng kahit anong hahadlang o makakasagabal sa malawakang pagsasakatuparan ng isang *reproductive health program;*

7. Section 17,[20] at ang kaukulang bahagi nito sa IRR ng RH Law[21] kaugnay sa pagsasagawa ng *pro bono reproductive health services* sa dahilang naaapektuhan nita ang *conscientious objector* sa pagkuha ng *PhilHealth accreditation;* at

8. Section 3.01(a)[22] at 3.0(j)[23] ng IRR ng RH Law sa dahilang nagdadagdag ito ng salitang *"primarily"* sa kahulugan ng *abortifacient*, na labag sa *Section* 4(a)[24] ng RH Law at *Section* 12, *Article* II[25] ng Saligang Batas.

Ang Religious Freedom, ang *Compelling State Interest Test,*
at ang *Conscientious Objector*

Bago ko talakayin ang mga substantibong mga argumento ukol sa *religious freedom,* nais kong batikusin ang paggamit ng isang *technical legal test* upang timbangin kung alin sa dalawa: (a) ang polisiya ng pamahalaan, gaya ng *reproductive health*, o (b) isang karapatan gaya ng religious freedom, ang dapat manaig. Sa palagay ko, hindi akma ang paggamit ng *technical legal test* na *compelling state interest* sa kasong hinaharap natin.

Hindi ako sumasang-ayon na nararapat gamitin ang *compelling state interest test* upang tiyakin ang legalidad ng RH Law - partikular na ang paggarantiya ng pamahalaan sa ligtas, mabisa, abot-kaya, de-kalidad, naaayon sa batas at hindi *abortifacient* na *reproductive health care services, methods , devices* at *supplies* para sa lahat, pati na ang mahalagang kaalaman ukol dito - sa kadahilanang buo ang pagkilala ng RH Law sa religious freedom, kaya 't hindi na kailangan ang test na ito. Sa *Estrada v. Escritor*,[26] ipinaliwanag natin na:

> The "compelling state interest" test is proper where conduct is involved for the whole gamut of human conduct has different effects on the state's interests: some effects may be immediate and short-term while others delayed and far-reaching. A test that would protect the interests of the state in preventing a substantive evil, whether immediate or delayed, is therefore necessary. However, not any interest of the state would suffice to prevail over the right to religious freedom as this is a fundamental right that enjoys a preferred position in the hierarchy of rights - "the most inalienable and sacred of all human rights," in the words of Jefferson. This right is sacred for an invocation of the Free Exercise Clause is an appeal to a higher sovereignty. The entire constitutional order of limited government is premised upon an acknowledgment of such higher sovereignty, thus the Filipinos implore the "aid of Almighty God in order to build a just and humane society and establish a government." As held in *Sherbert,* only the gravest abuses, endangering paramount interests can limit this fundamental right. A mere balancing of interests which balances a right with just a colorable state interest is therefore not appropriate. Instead, only a compelling interest of the state can prevail over the fundamental right to religious liberty. The test requires the state to carry a heavy burden, a compelling one, for to do otherwise would allow the state to batter religion, especially the less powerful ones until they are destroyed. **In determining which shall prevail between the state's interest and religious liberty, reasonableness shall be the guide. The "compelling state interest" serves the purpose of revering religious liberty while at the same time affording protection to the paramount interests of the state.**[27] (Emphasis ours)

Ginamit ang *compelling state interest test* sa *Estrada v. Escritor* upang malaman kung ang respondent doon ay nararapat na bigyan ng *exemption* laban sa kasong administratibo bunga ng pakikisama niya sa lalaking hindi niya asawa ayon sa *Civil Code.* Karaniwan, bilang kawani ng pamahalaan, mahaharap ang respondent sa kasong *disgraceful and immoral conduct.* Bagkus, inilahad ng *respondent* na bagama't walang basbas ng pamahalaang sibil ang kanilang pagsasama, may basbas naman ito ng kanilang relihiyon na *Jehovah's Witnesses and the Watch Tower and Bible Tract Society*. Kaya't hindi siya nararapat na sampahan ng kasong administratibo bunga nito.

Sa kadahilanang aminado naman ang *Solicitor General* na tunay at tapat ang paniniwala ng *respondent* sa kaniyang relihiyon, at nagdudulot ng ligalig sa kanyang paniniwala ang banta ng *disciplinary action* bunga ng kasong disgraceful and *immoral conduct,* nagpasiya ang Korte Suprema na nararapat na patunayan ng pamahalaan kung tunay nga na may *compelling secular objective* na nagbunsod dito upang hindi payagan ang pakikisama ng respondent sa lalaking hindi niya asawa. Nararapat din, ayon sa Korte Suprema, na ipakita ng pamahalaan na gumamit ito ng *least restrictive means* sa pagpigil ng karapatan ng mga tao sa

pagtatanggol nito ng *compelling state interest.*

Ukol dito, inihayag ng Korte Suprema na *"the government must do more than assert the objectives at risk if exemption is given; it must precisely show how and to what extent those objectives will be undermined if exemptions are granted*. "[28] Sa kalaunan, bigo ang pamahalaan na patunayan ang pakay nito sa pagbabawal sa relasyon ng *respondent.* Bunsod nito, binigyan ng *exemption* sa parusa ang respondent batay sa kanyang *religious freedom.*

Malinaw sa *Estrada v. Escritor* na sa ilalim ng *compelling state interest test*, ipinagtutunggali ang religious freedom ng mga mamamayan at ang interes ng pamahalaan sa pagpapatupad ng patakarang sinasabing nagpapahirap sa *religious convictions* ng ilan. Kapag hindi nanaig ang interes ng pamahalaan, magbibigay ng exemption sa patakaran ang Korte Suprema para sa mga mamamayang naninindigan para sa kanilang *religious freedom.* Isinaad din sa *Estrada v. Escritor* na nakagawian na ng Korte Suprema na magbigay ng *exemption* sa halip na magpawalang-bisa ng mga patakaran ng pamahalaan pagdating sa usapin ng *religious freedom.*

Hindi ito ang sitwasyon sa ilalim ng RH Law. Ayon sa petitioners, katumbas ng isang pagkakasala sa ilalim ng kanilang relihiyon ang pagsasagawa ng serbisyo ukol sa *modern family planning methods* at pagbibigay ng payo ukol dito. Labag ito sa *religious freedom* ng mga *conscientious health professionals* na naniniwalang likas na masama ang contraception. Dahil dito, nararapat na ipawalang-bisa ang RH Law. At, ayon sa mga kapatid kong Mahistrado, walang compelling state interest para payagan ang pamahalaang pilitin ang *health professionals* na lumabag sa kanilang paniniwala. Ang totoo, walang paglabag sa paniniwala na pinapataw ang RH Law.

Ang *Opt-Out Clause*

Nakalimutan ng petitioners ang kabuuan ng RH Law. Batid ng Kongreso na maaaring makasagasa sa paniniwala at ikaligalig ng ilang *medical professionals* ang kautusang ito sa RH Law. Dahil mismo dito kaya nag-ukit ang Kongreso ng *exemption* sa RH Law para sa mga *conscientious objectors* sa pamamagitan ng *"opt-out clause.* " Sa ilalim ng opt-out clause na nakapaloob sa *Section* 7 ng RH Law, hindi obligadong magdulot ng serbisyo kaugnay sa *modern family planning methods* ang mga *non maternity specialty hospitals* at mga ospital na pagmamay-ari at pinatatakbo ng mga *religious groups*. Sa kabilang banda, pinahahalagahan sa ilalim ng Section 23(a)(3) ng RH Law ang conscientious objection ng *health care service providers* batay sa kanilang ethical o *religious beliefs.* Ayon dito, exempted sila sa kaparusahan na ipapataw sa mga tatangging magdulot ng reproductive health care services at magbigay ng mahalagang kaalaman ukol dito.

Samakatuwid, hindi na nararapat na gamitin pa ang compelling state interest test upang matiyak ang legalidad ng RH Law. Matatandaang sa ilalim ng compelling state interest test, kailangang ipakita ng pamahalaan kung paano mawawalan ng saysay ang mga layunin nito sa pagbuo ng RH Law kung magbibigay ito ng exemptions sa mga itinatakda ng batas. Ngunit dahil kinilala na ng RH Law ang religious freedom ng mga *conscientious objectors* sa pamamagitan ng *exemption* na naka-ukit na dito, wala na sa pamahalaan ang pasanin upang ipagtanggol ang interes nito sa pagsisikap na mapangalagaan ang reproductive health ng mga mamamayan.

Naging sensitibo ang Kongreso sa paniniwala ng mga conscientious objectors sa pamamagitan ng paglalatag ng *exemptions* sa RH Law. Sa puntong ito, kung kakailanganin pa ng Kongreso na patunayan ang *compelling state interest*, mawawalan ng saysay ang respeto sa isa't isa na iniaatas ng ating Saligang Batas sa mga magigiting na sangay ng pamahalaan.

Ang agarang pagturo na lamang sa pinakamalapit na *health facility* o *health care service provider* sa mga pasyenteng naghahangad ng serbisyo ukol sa *modern family planning methods* ang nalalabing katungkulan ng mga conscientious objectors, ng mga *non-maternity specialty hospitals*, at mga ospital na pagmamay-ari at pinatatakbo ng mga religious groups. Ito ay upang malaman ng pasyente kung saan siya tutungo at upang hindi naman sila mapagkaitan ng serbisyong inihahandog ng pamahalaan para mapangalagaan ang kanilang reproductive health.

Ayon sa *Solicitor General*:

> 74. The duty to refer, as an "opt out" clause, is a carefully balanced compromise between, on one hand, the interests of the religious objector who is allowed to keep silent but is required to refer and, on the other, the citizen who needs access to information and who has the right to expect that the health care professional in front of her will act professionally. The concession given by the State under Section 7 and 23(a)(3) is sufficient accommodation to the right to freely exercise one's religion without wmecessarily infringing on the rights of others.[29]

Ayaw magpadala ng mga *petitioners.* Giit nila, labag pa rin sa kanilang *religious freedom* ang pag-aatas ng *duty to refer*. Sang-ayon dito ang Decision at nagsaad ito na ang *opt-out clause* ay isang "f*alse compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive."*[30]

Ayon sa paninindigang ito, ang pagturo sa pasyente sa ibang pinakamalapit na *health facility* o *health care service provider* na makatutulong sa kanila ay kahalintulad na kaagad ng contraception, ang bagay na kanilang itinuturing na likas na masama. Totoo naman na maaaring puntahan nga ng pasyente ang itinurong *health facility* o *health care service provider* at doon ay makakuha ito ng serbisyo ukol sa *modern family planning methods* na makasalanan sa paningin ng *conscientious objector.* Nguni't bunga

lamang ng pagsasanib ng napakaraming posibilidad ang resultang ito.

Maaaring magpasiya ang pasyente na hindi na lang kumunsulta, o kaya ay pumunta ito sa *health facility* o *health care service provider* na iba sa itinuro sa kanya ng conscientious objector. Maaari ding magpayo ang naiturong *health facility* o *health care service provider* na hindi hiyang o nararapat sa pasyente ang *modern family planning methods* dahil sa kundisyon ng kanyang pangangatawan. Maaaring pagkatapos ng lahat ng pagpapayo, pagpapatingin at paghahanda ukol sa gagawing *modern family planning method* o *procedure* ay magpasiya ang pasyente na huwag na lang ituloy ang lahat ng ito.

Isa lamang sa maraming posibilidad ang kinatatakutang resulta ng mga *petitioners*, at gayunpaman, hindi huling hakbang na maghahatid sa pasyente tungo sa *contraception* ang pagtuturo sa ibang *health facility o health care service provider.*

Ayon sa Decision, walang idinudulot na paglabag sa religious freedom ang pag-uutos sa mga ikakasal na dumalo sa mga seminar ukol sa *responsible parenthood, family planning, breastfeeding* at *infant nutrition* dahil hindi naman sila obligadong sumunod sa mga ituturo dito. Hindi rin masama ang pagbibigay-daan na mabigyan ng mahalagang kaalaman tungkol sa *family planning services* ang mga menor de edad na may anak o nagkaroon ng miscarriage para matutunan nila ang mga bagay na makatutulong sa kanila upang pangalagaan ang kanilang katawan at anak o dinadala. Kung gayon, at kahalintulad ng nasabing sitwasyon, wala rin dapat pagtutol sa atas ng RH Law na ituro ng mga *conscientious objector* ang mga pasyente sa pinakamalapit na *health facility* o *health care service* provider na makatutulong sa kanila.

Ang pagpapahalaga sa *informed choice* ng mga Pilipino pagdating sa usapin ng *reproductive health* ang pundasyon ng RH Law. Mananatili ang pagpapasiya sa pasyente; hinihiling lamang na huwag hadlangan ng *conscientious objectors* ang kanilang daan tungo sa paggawa ng masusing pagpapasiya.

Kinikilala ng *International Covenant on Civil and Political Rights* na ang religious freedom ay maaari ding mapasailalim sa mga *"limitations ... prescribed by law and ... necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.* "[31] Bukod dito, hindi rin maikakaila na maaaring ipagbawal ng pamahalaan ang isang gawain kahit alinsunod pa ito sa religious convictions kung ito ay labag sa "*important social duties or subversive of good order.* "[32]

Sa kanilang pagpasok sa propesyon, tinanggap ng mga *medical professionals* ang mga moral *values* at kaakibat na katungkulan sa mga pasyente.[33] Isa dito ang napapanahong *duty to refer* sa ibang *health facility* o *health care service provider* kung batid nila na dahil sa kanilang *religious beliefs*, hindi nila maaaring ihatid ang serbisyong hinihingi o kinakailangan ng pasyente.[34] Upang mapanatili ang ethical practice, hinihikayat ng mga pantas ang mga *conscientious objectors* na maglingkod kalapit ang ibang *medical professionals* na hindi *conscientious objectors* upang maayos na mapanatili ang isang *referral system* para masigurado na maibibigay sa pasyente ang mga pangangailangan nitong hindi kayang tugunan ng *conscientious objector*.[35] Mahalaga ito upang masiguro na tuloy-tuloy ang serbisyong pangkalusugan para sa mga taong nangangailangan nito.

Dahil dito, hindi maituturing na dagdag pasanin ng *medical professionals* ang *duty to refer* sa ilalim ng RH Law. Likas na ito sa kanilang propesyon. Sa katunayan, nasa kapangyarihan ng Kongreso ang maglatag ng mga alituntunin at dagdag na pasanin sa propesyon ng medisina ayon sa police power nito upang isulong ang public health. At, inuunawa ng RH Law na dahil sa *religious convictions*, hindi maaaring isagawa ng isang *medical professional* ang serbisyo ukol sa *modern family planning methods* kahit hinihingi pa ng pasyente. Dahil dito, pinapayagan sila na tumanggi ng pasyente at papuntahin ito sa ibang *medical professional* na makatutulong dito.

Kung tutuusin, maituturing na paglabag sa sinumpaang tungkulin ng mga *medical professionals* ang pagtangging magturo ng pasyente sa ibang *medical professional.* Maaari itong maging basehan ng *disciplinary action* laban sa kanila. Ayon sa isang lathalain, dahil ang mga medical professionals ay napapaloob sa isang monopoly sa paghahatid ng serbisyong pangkalusugan, ang ilan sa kanila na mas pinahahalagahan ang kanilang religious interests nang walang pakundangan sa kapakanan ng kanilang pasyente ay nababalot sa isang matinding *conflict of interest*.[36] Kilala ang dakilang propesyong ito sa pagpapakasakit para sa ikabubuti ng ibang tao,[37] kaya naman ang pagtanggi kahit sa pagtuturo na lamang sa ibang *health facility o health care service provider* ay maituturing na pagkait ng serbisyong pangkalusugan sa mga pasyente.

Upang mabigyan ng katumbas na proteksyon ang karapatan ng mga pasyente sa tuloy-tuloy na serbisyong pangkalusugan, minabuti ng Kongreso na patawan ng parusa ang mga conscientious objectors na tatangging tuparin man lamang ang *duty to refer*. Ipinataw ang parusa upang masiguro na hindi naman magagamit ng *conscientious medical professionals* ang *exemption* na ipinagkaloob sa kanila upang ipataw ang kanilang *religious beliefs* sa kanilang mga pasyente. Pinaiiral ito ng prinsipyong ang karapatan ng malayang pagsamba at pagpapahayag ng relihiyon ay nangangahulugan na walang karapatan ang sinuman na mang-api sa paniniwalang hindi ayon sa kanila.

Sa puntong ito, nais kong linawin na ipinagbabawal ng Section 23(a)(1) ang pagkakait ng mahalagang kaalaman, pagbabawal sa pagpapalaganap nito o sadyaang pagbibigay ng maling impormasyon kaugnay ng mga programa at serbisyo ukol sa *reproductive health*, karapatan ng lahat sa *informed choice* at ang paggarantiya ng pamahalaan sa ligtas, mabisa, abot-kaya, de-kalidad, naaayon sa batas at hindi *abortifacient* na *family planning methods.*

Sa kabilang banda, ipinagbabawal naman ng *Section* 23(a)(2) ang pagtangging magsagawa ng ligtas at naaayon sa batas na *reproductive health procedures* dahil lamang sa ang taong naghahangad nito, bagama't nasa hustong edad, ay hindi

makapagpakita ng pahintulot ng kanyang asawa o magulang. Hindi nito ipinagbabawal ang pagtangging magsagawa ng *reproductive health procedures* dahil sa kanilang *religious beliefs.*

Ang mga *health care service providers* na tinutukoy sa Section 23(a)(l) at Section 23(a)(2) ay hindi ang mga *conscientious objectors.* Kung *conscientious objector* ang isang *health care service provider,* maaari na siyang tumanggi sa unang pagkakataon pa lamang, at wala na siyang oportunidad para magbigay ng maling impormasyon kaugnay ng mga programa at serbisyo ukol sa *reproductive health* dahil tinanggihan na niya ang pasyente. Gayundin, wala nang oportunidad ang mga *conscientious objectors* na tumangging magsagawa ng ligtas at naaayon sa batas na *reproductive health procedures* sa isang may-asawa o menor de edad dahil sa kakulangan ng pahintulot ng asawa o magulang. Paglapit pa lamang ng pasyente sa kanya na humihingi ng serbisyo ukol sa *reproductive health*, maaari na siyang tumanggi, at ang pagtangging ito ay dahil sa kanyang *religious beliefs*, hindi dahil sa kawalan ng pahintulot.

Kung *conscientious objector* ang *health care service provider*, mapapasailalim siya sa Section 23(a)(3) na nagsasabing isasaalang-alang at irerespeto ang kanilang *ethical* o *religious beliefs*. Ayon dito, bagama't maaaring parusahan ang iba kung sila ay tatangging magsagawa ng de kalidad na *health care services* o tatangging magbigay ng mahalagang kaalaman ukol dito, pinapayagan ang mga c*onscientious objector* na tumanggi kung wala sa emergency condition o hindi *serious case* ang pasyente. Hindi parurusahan ng batas ang mga *conscientious objector* na tumanggi, at kabilang ito sa *exemption* na inilatag ng RH Law para sa kanila.

Sa gayon, malinaw ang *legislative intent* ng Kongreso na hindi mapapasailalim ang mga *conscientious objector* sa *Section* 23(a)(l) at Section 23(a)(2). Maaari nang tumanggi sa pasyenteng wala sa *emergency condition* o hindi *serious case* sa unang pagkakataon pa lamang ang sinumang *health care service provider,* pribado o pampubliko, na tumututol sa paghahatid at pagsasagawa ng *reproductive health services* at *procedures* at pagbibigay ng mahalagang kaalaman ukol dito dahil sa kanilang *religious beliefs.*

Nguni't, kalakip ng karapatan ng pagtanggi ng mga *conscientious objector* ang katungkulang ituro ang mga pasyenteng wala sa *emergency condition* o hindi *serious case* sa ibang pinakamalapit na *health facility* kung saan nila makukuha ang serbisyo at mahalagang kaalaman ukol sa *reproductive health* na ninanais nila.

FDA Certification sa Section 9

Ayon sa *Decision, "empty as it is absurd* "[38] ang huling pangungusap sa unang talata ng *Section* 9[39] ng RH Law na nag-uutos na makukuha lamang sa kondisyong hindi gagamitin bilang abortifacient ang mga produkto na kasama o isasama sa *essential drugs list* (EDL). Ayon sa kanila, hindi naman maaaring naroroon ang FDA upang maglabas ng *certification* ukol dito sa tuwing ipamamahagi ang contraceptive. Sa halip, iminungkahi na baguhin ang pagkakasulat ng pangungusap upang linawin na walang kahit anong *abortifacient* na isasama o maisasama sa EDL.

Noong *oral arguments,* nilinaw ni *Associate Justice Mariano C. Del Castillo* ang bagay na ito sa *Solicitor General,* partikular na sa paraan kung paano masisiguro ng pamahalaan na hindi gagamitin bilang *abortifacient* ang mga produkto sa EDL:

> **JUSTICE DEL CASTILLO:**
> Just one question, Counsel. The RH Law allows the availability of these contraceptives provided they will not be used as an abortifacient.
>
> **SOL. GEN.JARDELEZA:**
> Yes, Your Honor.
>
> **JUSTICE DEL CASTILLO:**
> So there's a possibility that these contraceptives, these drugs and devices may be used as an abortifacient?
>
> **SOL. GEN. JARDELEZA:**
> No, Your Honor, there will be [sic] not be a possibility. After you have the FDA certifying that... (interrupted)
>
> **JUSTICE DEL CASTILLO:**
> **Yes, but why does the law still [say) that, "...provided that they will not be used as an abortifacient [?]"**
>
> **SOL. GEN. JARDELEZA:**
> **The context of that, Your Honor, is that, there are certain drugs which are abortifacients.**
>
> **JUSTICE DEL CASTILLO:**
> So how then can...how can a government make sure that these drugs will not be used as an abortifacient?
>
> **SOL. GEN. JARDELEZA:**
> To the best of my understanding, Your Honor, for example, a woman who is pregnant and then the doctor says there is no more fetal heartbeat then the unborn or the fetus is dead. The doctor will have to induce abortion. Sometimes you do this by curettage, which I think, incision. **But many times there are drugs that are abortifacient; they are life-**

saving because then you bring the woman to a health center, the baby is dead, you induce abortion, the doctors can correct me, once that drug, I think, is called oxytoxin. **So any hospital has oxytoxin in its pharmacy because you need that as a life-saving drug. That is the context of that provision which says, "...should not be used as an abortifacient." Meaning, just like restricted drugs, oxytoxin will only be used in a hospital to be used for therapeutic abortion,** that I believe, Your Honor, is the meaning of that, "...cannot be used as an abortifacient." **Meaning, the National Drug Formulary contains oxytoxin, I believe, today but that is to be used under certain very very restrictive conditions**, that's the meaning of "...should not be used as an abortifacient." **Meaning, a woman who is healthy in the pregnancy cannot go to a doctor and the doctor will say, "You want an abortion, I'll give you oxytoxin", that cannot be done, Your Honor**; that's my understanding.

JUSTICE DEL CASTILLO:
So when there's only a choice between the life of the mother and the life of the child.

SOL. GEN. JARDELEZA:
Yes, that's my understanding. **The best example is the, the monitor shows there is no more fetal heartbeat. If you don't induce abortion, the mother will die.**

JUSTICE DEL CASTILLO:
Thank you, counsel.[40] (Emphases supplied)

Sa gayon, maaaring isama ng FDA ang ilang maaaring gamiting *abortifacients,* tulad ng *oxytoxin*, sa *National Drug Formulary* dahil ang mga ito ay ginagamit upang mailabas ang patay na sanggol mula sa sinapupunan ng ina. Ginagawa ito upang mailigtas ang buhay ng ina na maaaring mameligro bunga ng impeksiyon kung hahayaang nasa loob ang patay na sanggol. Nagpapahiwatig lamang ang huling pangungusap sa unang talata ng Section 9 ng *legislative intent* na kahit may mga *abortifacients* na isasama sa EDL, ipinagbabawal na gamitin ang mga ito bilang *abortifacient*, o paraan upang mapatay ang malusog na sanggol sa sinapupunan.

Pahintulot ng Asawa

Mayroong pangunahing karapatan, at pangangailangan, ang lahat ng tao sa sariling pagpapasiya. Biniyayaan ng kaisipan ang lahat ng tao upang malayang maipahayag ang kanyang saloobin, makabuo ng sariling pananaw at makapagpasiya para sa kanyang kinabukasan.

Sa ilalim ng ating Saligang Batas, pinangangalagaan ng *due process clause* ang garantiya ng kalayaan sa bawat Pilipino. Nagsasabi ito na walang sinuman ang maaaring bawian ng buhay, kalayaan at ari-arian nang hindi ayon sa paraang inilatag sa batas. Pananggga ng mga mamamayan ang *due process clause* sa hindi makatuwirang pamamalakad at pagsamsam ng pamahalaan. Gayunpaman, *"[t]he Due Process Clause guarantees more than fair process, and the 'liberty' it protects includes more than the absence of physical restraint."*[41] Nagtatakda ang due process clause ng limitasyon sa kapangyarihan ng pamahalaan pagdating sa mga karapatan ng mamamayan.[42] Bukod sa mga karapatang ginagarantiya ng *Bill of Rights*, saklaw ng due process clause ang lahat ng bahagi ng buhay ng tao. Kabilang na rito ang karapatan ng sariling pagpapasiya.

May nakapagsabi na *"[n]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."*[43] Sa katunayan, *"[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body*.[44]

Ayon sa *Decision*, isang pribadong paksa na dapat talakayin ng mag asawa ang desisyon sa usapin ng *reproductive health*, at hindi maaaring mapunta lamang sa asawang sasailalim dito ang pagpapasiya. Hinay-hinay tayo. Hindi naman ipinagbabawal ng RH Law ang pagsanib ng pasiya ng mag-asawa kaya't hindi dapat sabihin na nakapaninira ng pagsasamahan ng mag-asawa ang karapatan ng may-katawan na magpasiya ukol sa *reproductive health*. Nguni't sa panahon ng di-pagkakasundo ng pasiya, walang ibang makatuwirang sitwasyon kundi kilalanin ang karapatan ng taong may-katawan na magpasiya.[45] Hindi nawawalan ng karapatan ang tao dahillamang sa pag-aasawa. Hangga't hindi ito labag sa batas, may kalayaan ang bawat isa na gawin ang kanyang nais at magpasiya ayon sa makabubuti para sa kanyang sarili. Hindi isinusuko sa asawa sa oras ng kasal ang pagpapasiya ukol sa sariling katawan. Kung hindi, bubuwagin nito ang prinsipyo sa likod ng batas laban sa *violence against women.*

Sa ilalim ng RH Law, ihahandog sa lahat ang mahalagang impormasyon ukol sa *modern family planning methods*. Ipinapalagay din na paglilimian ng asawang sasailalim sa *procedure* ang mga magiging epekto nito sa kanya at sa kanyang mahal sa buhay. Kung magdesisyon siya na sumailalim sa napiling *reproductive health procedure,* hindi ito dapat hadlangan ng sinuman. Bahagi pa rin ito ng *informed consent* na pundasyon ng RH Law.

Walang anumang nakasulat sa RH Law na nag-aalis sa mag-asawa ng kanilang karapatang bumuo ng pamilya. Sa katunayan, tinitiyak nito na ang mga maralita na nagnanais magkaroon ng anak ay makikinabang sa mga payo, kagamitan at nararapat na *procedures* para matulungan silang maglihi at maparami ang mga anak. Walang anumang nakasulat sa batas na nagpapahintulot sa pamahalaan na manghimasok sa pagpapasiya *"[that] belongs exclusively to, and [is] shared by, both spouses as one cohesive unit as they chart their own destiny."*[46] Walang anumang nakasulat sa RH Law na humahadlang sa pagsali ng asawa sa

pagtimbang ng mga pagpipiliang *modern family planning methods*, at pagpapasiya kung ano ang pinakamabuti para sa kanyang asawa. Kung may epekto man ang RH Law, ito ay ang pagpapatibay ng makatotohanang sanggunian sa pagitan ng mag asawang pantay na magpapasiya ukol sa isang bagay na magtatakda ng kanilang kinabukasan.

Sa pamamagitan ng pagpapahalaga sa pangunahing pasiya ng asawang sasailalim sa *reproductive health procedure,* pinaiigting lamang ng RH Law ang pangangalaga sa pangunahing karapatan ng bawat tao na magpasiya ukol sa kanyang sariling katawan. Sa pamamagitan din nito, naglalatag ang RH Law ng proteksiyon para sa mga medical professionals laban sa mga asunto at panliligalig bunga ng pagkuwestiyon o paghamon kung bakit nila isinagawa ang *reproductive health procedure* sa kabila ng kawalan ng pahintulot ng asawa.

Pahintulot ng Magulang

Itinuturing din ng *Decision* na "*[e]qually deplorable*"[47] ang bahagi ng RH Law na nagbibigay-daan sa mga menor de edad na may anak o nagkaroon ng *miscarriage* na makinabang sa *modern family planning methods* kahit walang pahintulot ang kanilang mga magulang. Ayon dito, pinuputol ng *Section* 7 ang parental authority sa mga menor de edad *"just because there is a need to tame population growth*."[48]

Hindi angkop na manghimasok ang Korte Suprema sa katanungan kung ang RH Law ay isang *population control measure* sapagka't ang Kongreso lamang ang makasasagot sa tanong kung ano ang nag-udyok dito sa pagbuo ng nasabing batas. Ang tanging dapat pagtuunan ng pansin ng Korte Suprema ay kung ang batas at ang mga nilalaman nito ay alinsunod sa itinatakda ng Saligang Batas. Masasabi nating ispekulasyon lamang ang paghusga sa hangarin ng Kongreso na handa itong sirain ang *parental authority* upang isulong lamang ang *population control.* Pasintabi po, hindi maaaring ganito ang tono ng Korte Suprema patungo sa Kongreso.

Kinikilala ng RH Law na hindi lamang edad ng isang tao ang tanging palatandaan upang mahandugan ng *family planning services*. Batid nito ang pangkasalukuyang sitwasyon ng paglaganap ng maagang pagkamulat at pagsubok ng mga kabataan sa kanilang sekswalidad. Nangangailangan ding mabigyan ng kaalaman, at kung kinakailangan, mahandugan ng *modern family planning services* kung ito ay kanilang gugustuhin, ang mga menor de edad na nanganak o nagkaroon ng miscarriage. Bilang isang hakbang sa pangangalaga ng pangkalahatang kalusugan, ang pagbibigay ng *modern family planning services* sa mga menor de edad na ito ay daan upang maunawaan nila ang mga kahihinatnan at kaukulang pananagutan ng pagiging isang magulang, gayong nabuntis na sila, pati na ang pagbuo ng pamilya.

Hindi akma ang antas ng pagpapahalaga sa *parental authority* ng *Decision*, na sa pangamba ng Decision ay mawawala dahil lamang sa pakinabang ng menor de edad sa *family planning services* nang walang pahintulot ng kanilang magulang.

"*[P]arental authority and responsibility include the caring for and rearing of unemancipated children for civic consciousness and efficiency and the development of their moral, mental and physical character and well being.*"[49] Pinag-uukulan ng ilang karapatan at tungkulin ang mga magulang kaugnay sa kanilang mga anak na wala pa sa tamang gulang.[50] Maaaring talikuran o ilipat ang *parental authority* at *responsibility* ayon lamang sa mga halimbawang nakasaad sa batas.[51] Mabibinbin o mapuputol ito ayon lamang sa mga sitwasyong nakasaad sa *Family Code*.[52]

Walang anumang nakasulat sa RH Law na nagsasabing napuputol ang *parental authority* kapag ang menor de edad ay may anak na o nagkaroon ng *miscarriage*. Hindi nito dinadagdagan ang mga halimbawang nakasaad sa *Family Code* ukol sa pagkawala ng parental authority. Walang anumang nakasulat sa batas na nagbibigay-kapangyarihan sa pamahalaan upang humalili sa ina at ama sa pagdamay at pagtugon sa mga pangangailangan ng kanilang mga menor de edad. Kailanma'y hindi kaya at hindi maaaring gawin ito ng pamahalaan, hindi lamang dahil hindi ito praktikal nguni't dahil walang makatutumbas sa inaasahang pagmamahal ng magulang. Sa ganitong pagsubok sa buhay ng isang menor de edad, higit lalo niyang kailangan ang *"comfort, care, advice and guidance from her own parents*."[53] Sa ilalim ng RH Law, hindi pinagbabawalan ang mga menor de edad na may anak o nagkaroon ng miscarriage na humingi ng payo sa kanilang magulang, at hindi pinagbabawalan ang mga magulang na magbigay nito. Ipinapalagay na hangad lamang ng mga magulang ang makabubuti para sa kanilang anak.

Sa pagsasabi na hindi kailangan ang *parental consent* ng mga menor de edad na may anak o nagkaroon ng miscarriage bago mabigyan ang mga ito ng *modern family planning services*, pinanghihimasukan ng pamahalaan ang ugnayan sa pagitan ng menor de edad at ang nilapitan nitong *medical health professional.* Kadalasan, pinagkakaitan ng *reproductive health services* ng mga pribado at pampublikong *health professionals* ang mga menor de edad dahil sa kaisipang masyado pa silang mga bata para magkaroon ng kaalaman sa mga bagay ukol sa kanilang sekswalidad. Ang paghingi ng *parental consent* ang madalas na dahilan upang tanggihan ang ganitong pagsangguni ng mga kabataan. Minsan nga, hinihiya pa ang mga ito. Nguni't kailangang tandaan na nagdalang-tao na ang mga menor de edad na ito, at hindi na masasabing wala silang muwang pagdating sa mga bagay na sekswal.

Bahagi ng RH Law ang paninindigan ng pamahalaan na ang mga kabataan ay *active rights holders,* at katungkulan ng pamahalaan na siguraduhin na matatamasa nila ang kanilang mga karapatan nang walang diskriminasyon.[54] Upang mapangalagaan ang karapatan ng mga kabataan na magkaroon ng mahalagang kaalaman ukol sa kanilang kalusugan, ipinaguutos ng RH Law ang pagtuturo ng *age- and development-appropriate reproductive health education*[55] sa lahat ng pribado at pampublikong paaralan.

Naaayong linawin na sakop ng kautusang magturo ng *reproductive health education* sa kanilang mga mag-aaral ang mga pribadong paaralan. Opsyonal ang paggamit ng *curriculum* na bubuuin ng *Department of Education.* Ang nasabing *curriculum* ay gagamitin ng mga pampublikong paaralan at maaaring gamitin ng mga pribadong paaralan.

Ito ang paglilinaw ni *Representative* Edcel C. Lagman kaugnay sa giit ng *petitioners* na lumalabag sa *equal protection clause* ng Saligang Batas ang RH Law dahil ginagawa nitong *mandatory* sa pampublikong paaralan at opsyonal sa pribadong paaralan ang **reproductive health education**. Ayon sa kanya:

> 143. x x x **[A]ge and development appropriate RH education is mandatory in formal and non-formal educational system without distinction whether they are public or private, where adolescents are enrolled. Clearly, private schools are not exempt from affording their adolescent pupils/students [with] proper and appropriate RH education.**
>
> 144. **The difference only pertains to the RH curriculum which shall be formulated by DepEd which "shall be used by public achools and may be adopted by private schools."**
>
> 145. If the DepEd curriculum is not adopted by private schools, they can formulate their own curriculum subject to the review and approval of the DepEd which has jurisdiction over private schools. Private schools are accorded equal flexibility in adopting their own curriculum after requisite consultation as provided in the RH Law.[56] (Emphases supplied)

Bukod sa pagbibigay sa kanila ng age- and development-appropriate reproductive health education, ginagawaran din ng dagdag na karapatan ang mga menor de edad na may anak o nagkaroon ng miscarriage na makinabang sa mga *reproductive health services* na inihahandog ng pamahalaan.

Kaagad na mauunawaan ang katuwiran kung bakit may dagdag na karapatan na ibinibigay sa mga menor de edad na may anak o nagkaroon ng *miscarriage*. Kung ang hindi pa nagbubuntis ay may karapatan sa akmang kaalaman, higit na may karapatan ang nagbuntis na. Naglahad ang *Committee on the Rights of the Child na "[a]dolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs*. "[57] Batay sa karapatan ng mga kabataan na malayang maihayag ang kanilang pananaw sa mga bagay na may kinalaman sa kanila, nararapat na isaalang-alang ang kanilang saloobin.[58] Kung mababatid na may tamang kamalayan at nasa hustong pag-iisip ang menor de edad na may anak o nagkaroon ng miscarriage, sapat na na ibigay nila ang kanilang informed consent.[59]

Public officers at skilled health professionals

Hindi ako sang-ayon sa Decision na walang totoong pagkakaiba sa pagitan ng pribado at pampublikong *health officers.* Naniniwala ako na napakalaki ng pagkakaiba sa pagitan nila at nagmumula ito sa kadahilanang inaasahan ang mga pampublikong *health officers* bilang *frontline* sa paghahatid ng serbisyong pangkalusugan.[60] Bilang *public officers,* may pananagutan sila sa taong-bayan sa lahat ng oras, at nararapat na maglingkod sila nang may dangal, katapatan, kahusayan, ganap-taglay ang pagiging makabayan at makatarungan, at payak ang pamumuhay.[61] Maaari din nating banggitin na ang sambayanan ang nagpapasahod sa kanila.

Sa pamamagitan ng paglilingkod ng mga pampublikong *health officers* naisasakatuparan ng pamahalaan ang tungkulin nito na pangalagaan ang kalusugan ng mga mamamayan, lalo na ang mga maralitang bahagya na ngang makabili ng sapat na pagkain sa araw-araw.

Sa puntong ito, binibigyang-diin na maaaring maging conscientious objectors ang mga pampublikong *health officers*. Malinaw ito sa RH Law mismo na naglatag ng karapatan sa conscientious objection nang walang pasubali sa pagitan ng pribado at pampublikong *health professionals.* Pinagtitibay ito ng IRR ng RH Law na nagsasabing maaring maging conscientious objectors ang mga pampublikong *skilled health professionals* sa ilalim ng bahaging ito:

> SECTION 5.24. *Public Skilled Health Professional as a Conscientious Objector*. -**In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skilled health professional shall comply with the following requirements:**
>
> a) The skilled health professional shall explain to the client the limited range of services he/she can provide;
>
> b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;
>
> c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of

> delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client's travel arrangements and financial capacity;
>
> d) Written documentation of compliance with the preceding requirements; and
>
> e) Other requirements as determined by the DOH.
>
> In the event where the public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay. (Emphasis supplied)

Sa gayon, hindi karapat-dapat na sabihing lumalabag sa *equal protection clause* ng ating Saligang Batas ang RH Law at IRR nito. Kaugnay nito, tinutuligsa ang sumusunod na bahagi ng *Section* 5.24 ng IRR ng RH Law:

> *Provided*, *That* skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, **who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules**, cannot be considered as conscientious objectors. (Emphasis supplied)

Itinatadhana nito na hindi maaaring maging *conscientious objectors* ang mga pampublikong *skilled health professionals* na **mismong inatasang magsagawa ng mga kautusan at programa sa ilalim ng RH Law at IRR nito**. Malinaw ang dahilan nito. Walang makabuluhang pagsasakatuparan ng RH Law, at pangangalaga sa *reproductive health* ng sambayanan, kung hahayaan ang mga *provincial, city, o municipal health officers, chiefs of hospital, head nurses* at *supervising midwives* - iyong mga itinuturing na nasa *frontline* ng paghahatid ng serbisyong pangkalusugan - na tumangging magbigay ng *reproductive health care services* at mahalagang kaalaman ukol dito.

Makikitang hindi *discriminatory* ang nasabing probisyon kapag inilapat ang *test of reasonableness*.[62] Sakop lamang nito ang mga *public skilled health professionals* na inatasang isagawa ang mga kautusan at programa sa ilalim ng RH Law at IRR nito. Makikita na iyon lamang mga may management prerogative at kapangyarihang mag-impluwensiya ng pamamalakad ng kanilang institusyon ang hindi maaaring tumangging maghatid ng *reproductive health care services* at mahalagang kaalaman ukol dito. Malinaw ang pagkakaiba nila sa ibang pampublikong *health professionals* na maaaring maging *conscientious objectors.*

Malinaw din na may kaugnayan sa layunin ng RH Law ang pagbubukod sa mga *skilled health professionals* gaya ng *provincial, city*, o *municipal health officers, chiefs of hospital, head nurses* at *supervising midwives*. Walang sinuman ang makapagsasabi na ito ay *"palpably arbitrary or capricious* "[63] gayong ang sakop nito ay iyon lamang mga itinuturing na pinuno ng mga pampublikong institusyon. Walang dahilan upang ipangamba na ipatutupad lamang ang pagbubukod na ito sa umiiral na kalagayan o kaya hindi ito ipatutupad sa lahat ng *provincial, city,* o *municipal health officers*, *chiefs of hospital, head nurses* at *supervising midwives.*

Bilang mga kawani ng pamahalaan, nalalagay sa isang pambihirang katayuan ang mga *public officers* para isakatuparan ang mga nilalayon ng pamahalaan. Dahil dito, malaki ang nakaatang na responsibilidad sa kanila upang ilunsad ang mga balakin ng pamahalaan. Pagdating sa *reproductive health programs,* magiging kahangalan para sa pamahalaan kung hahayaan nito na sariling mga kawani ang humadlang sa pamamagitan ng paglalatag ng mga salungat na patakaran gamit ang makinarya ng pamahalaan. Samakatuwid, hindi dapat payagang tumalikod sa tungkulin ang isang *public officer* na mismong inatasang isagawa ang mga kautusan at programa sa ilalim ng RH Law at IRR nito, o biguin nito ang paglulunsad ng isang *reproductive health program.*

PhilHealth Accreditation

Sa ilalim ng Section 17 ng RH Law, hinihikayat ang mga pribadong *reproductive health care service providers,* gaya ng *gynecologists* at *obstetricians* , na magbigay ng libreng *reproductive health care services* katumbas ng 48 oras bawat taon sa mga maralitang pasyente. Itinatakda din ng Section 17 na kailangang magbigay ng nasabing serbisyo katumbas ng 48 oras ang mga *medical professionals* upang magkaroon sila ng *PhilHealth accreditation*. Ayon sa Decision, nararapat na bigyan din ng *exemption* ang mga *conscientious objectors* sa panuntunang ito dahil sa kanilang *religious beliefs* na nagbabawal sa kanilang magbigay ng serbisyo ukol sa *reproductive health.*

Ayon sa *petitioners* , tinututulan nila ang pagpapalaganap ng *contraceptives,* na itinuturing nilang likas na masama. Hindi nila tinututulan ang pagpapahalaga sa *reproductive health* ng mga mamamayan, partikular na ang mga maralita. Tinutukoy sa Section 17 ang pagbibigay ng libreng *reproductive health care services.*

Batay sa RH Law, tumutukoy ang *reproductive health care* sa paghahatid ng lahat ng serbisyo, kagamitan, pamamaraan at facilities na makatutulong sa ikabubuti ng *reproductive health* sa pamamagitan ng pagtugon sa mga sakit na kaugnay nito.[64] Kasama dito ang pagpapanatili ng *sexual health* upang mapabuti ang antas ng buhay at *personal relations* ng mga mamamayan.

Saklaw ng *reproductive health care* ang mga sumusunod na bahagi nito:

1) Family planning information and services which shall include as a first priority making women of reproductive age fully aware of their respective cycles to make them aware of when fertilization is highly probable, as well as highly improbable;

2) Maternal, infant and child health and nutrition, including breastfeeding;

3) Proscription of abortion and management of abortion complications;

4) Adolescent and youth reproductive health guidance and counseling;

5) Prevention, treatment and management of reproductive tract infections (RTis), HIV and AIDS and other sexually transmittable infections (STis);

6) Elimination of violence against women and children and other forms of sexual and gender-based violence;

7) Education and counseling on sexuality and reproductive health;

8) Treatment of breast and reproductive tract cancers and other gynecological conditions and disorders;

9) Male responsibility and involvement and men's reproductive health;

10) Prevention, treatment and management of infertility and sexual dysfunction;

11) Reproductive health education for the adolescents; and

12) Mental health aspect of reproductive health care.[65]

Makikita sa listahang ito ang lawak ng saklaw ng *reproductive health care* na tinutukoy sa Section 17. Masasabing isa lamang sa *family planning information and services* ang *contraceptives* at *contraception* na tinututulan ng mga conscientious objectors. Mayroon pang labing-isang bahagi ng *reproductive health care* na kasunod nito. Maaaring gamitin ng mga *reproductive health care service providers* ang mga libreng serbisyo na mapapaloob sa anumang bahagi ng *reproductive health care* upang mabuo ang 48 oras na kakailanganin nila para sa kanilang *PhilHealth accreditation*. Maaari ngang ibuhos ng *conscientious objector* ang lahat ng 48 oras sa pagpapalaganap ng natural *family planning method*. Alalahanin ng lahat na pribilehiyo at hindi karapatan ang magkaroon ng PhilHealth accreditation kaya't tama lang na isukli ng *gynecologists* at *obstetricians* ang 48 oras na *pro bono service* sa maralita upang mapangalagaan ang kanilang *reproductive health.*

Kung tutuusin, *reproductive health care* ng mga pasyente ang pangunahing pinagtutuunan ng pansin ng mga gynecologists at obstetricians. Kung bibigyan sila ng *exemption* sa *Section 17* dahil *conscientious objector* sila, ang tanging magiging epekto nito ay hindi nila kakailanganing magbigay ng anumang libreng serbisyo. Kung gayon, mawawalan ng saysay ang layunin ng pamahalaan sa ilalim ng RH Law na ihatid sa mga maralitang mamamayan ang kadalubhasaan ng mga pribadong *reproductive health care service providers*.

Pahuling Pasabi

Walang pinapanigan ang Korte Suprema kundi ang Saligang Batas, at pinakinggan ang lahat ng dumulog dito sa usapin ng RH Law. Hati-hati ang opinyon pagdating sa *reproductive health* at *family planning*. Halimbawa, bagama't may mga pagtutol ang bahagi ng Simbahang Katolika sa reproductive health atfamily planning, itinuturing naman itong alinsunod sa mga aral ng Islam. Ayon safatwah na inilabas ng *Assembly of Darul-Iftah of the Philippines* kaugnay sa *reproductive health* at *family planning,* walang kasulatang napapaloob sa Qur'an na nagbabawal sa pagpigil at pag-aagwat sa pagbubuntis at pagbabawas sa dami ng anak.

Ayon din sa kanila, hindi salungat sa konsiyensiya ang *family planning*. Sa katunayan, itinataguyod ito ng Shariah. Itinakda ng Qur'an na kailangang pasusuhin ng ina ang sanggol hanggang ito ay dalawang taong gulang, at nagbabala ang Propeta laban sa pagpapasuso ng inang nagdadalang-tao. Malinaw dito ang layuning pag-aagwat ng pagbubuntis, kung saan kinakailangang hindi mabuntis ang ina sa loob ng dalawang taon na ito ay nagpapasuso.

Pinapayagan ang lahat ng methods of contraception hangga't ang mga ito ay ligtas, naaayon sa batas, aprobado ng *medical professionals* at alinsunod sa Islamic Shariah. Wala ring nakikitang pagtutol ang Shariah sa pakahulugan ng *International Conference on Population and Development sa reproductive health*,[66] patina ang mga prinsipyo nito ukol sa pagpapasiya sa dami at pag-aagwat ng mga anak, pagkakaroon ng kaalaman ukol sa sariling sekswalidad, pagiging ligtas sa mga sakit kaugnay sa reproduction, at pagkakaroon ng safe at *satisfying sex life* sa pagitan ng mag-asawa. Kung susukatin ang mga adhikain ng RH Law batay sa *religious freedom* ng mga Muslim, na bumubuo sa limang porsiyento ng mga Pilipino, wala itong hatid na ligalig o pasanin.

Sa likod ng karapatan sa malayang pagsamba at pagpapahayag ng relihiyon ay ang pagrespeto sa paniniwala ng iba. Hati-hati maging ang mga opinyon ng mga Katoliko pagdating sa *reproductive health* at *family planning*. Malaking bahagi ng mga Katoliko ang sumusuporta sa RH Law at mga layunin nito. Dahil dito, walang maituturing na iisang awtoridad pagdating sa usaping ito kundi ang Saligang Batas. Ito ang nag-iisang batayan na isasaalang-alang upang makarating ang Korte Suprema sa konklusyong makatarungan para sa lahat.

AKO AY SANG-AYON sa *Decision* na ang ***SECTIONS* 4(A), 9, 15, 17 AT 24 NG RH LAW AY HINDI LABAG SA SALIGANG BATAS. SANG-AYON DIN AKO** na ang **RH LAW AY HINDI LABAG SA *RIGHT TO LIFE, RIGHT TO HEALTH, RIGHT TO EQUAL PROTECTION OF THE LAW AT RIGHT TO DUE PROCESS OF THE LAW*** ng mga mamamayan. Bukod dito, **SANG-AYON AKO NA ANG RH LAW AY HINDI LABAG SA PRINCIPLE OF NON-DELEGATION OF LEGISLATIVE AUTHORITY, ONE SUBJECT - ONE BILL RULE AT AWTONOMIYA** ng mga pamahalaang lokal at ng Autonomous Region of Muslim Mindanao sa ilalim ng Saligang Batas.

SANG-AYON AKO na HINDI PA NAPAPANAHON UPANG MAGPAHAYAG ANG KORTE SUPREMA UKOL SA PAGPAPAWALANG-BISA NG *SECTION 14* dahil hindi pa nakabubuo ng curriculum ang Department of Education. Hindi pa rin napapanahon upang ipahayag kung ang RH Law ay labag sa right to health ng mga mamamayan dahil wala pang contraceptive na naisusumite para sa pagsusuri ng FDA sa ilalim ng RH Law.

SANG-AYON AKO na nararapat na **IPAWALANG-BISA ANG SECTION 3.01(A) AT 3.01(J) NG IRR NG RH LAW** dahil nagdadagdag ito ng salitang *"primarily"* sa kahulugan ng *abortifacient*, na hindi naman ayon sa mga titik ng *Section* 4(a) ng RH Law.

GAYUNPAMAN, hindi nito maaapektuhan ang paniniwala kong ang **LAHAT NG MGA PROBISYON NG RH LAW NA TINUTULIGSA NG *PETITIONERS* AY PAWANG KONSTITUSYONAL.**

SAMAKATUWID, ako ay bumoboto para ipahayag na **HINDI LABAG SA SALIGANG BATAS** ang **SECTIONS 7, 17, 23(A)(1), 23(A)(2)(1), 23(A)(2)(11), 23(A)(3) AT 23(B) NG RH LAW.**

---

[1] Article II, Section 12.

[2] *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. COMELEC,* G.R. No. 177508, 7 August 2009, 595 SCRA 477; *Samson v. Aguirre*, 373 Phil. 668 (1999); *US v. Grant,* 18 Phil. 122(1910).

[3] *Insular Lumber Co. v. Court of Tax Appeals,* 192 Phil. 221 (1981); *Municipality of Jose Panganiban, Camarines Norte v. Shell Company*, 124 Phil. 197 (1966); *Yu Cong Eng v. Trinidad,* 47 Phil. 385 (1925).

[4] *Garcia v. COMELEC*, G.R. No. 111511 , 5 October 1993,227 SCRA 100.

[5] Id.

[6] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management,* G.R. No. 164987, 24 April 2012, 670 SCRA 373; *Cawaling, Jr. v. COMELEC,* 420 Phil. 524 (2001); *Dimaporo v. Mitra, Jr.,* 279 Phil. 843 (1991).

[7] *Cawaling v. COMELEC*, supra note 7.

[8] *Basco v. PAGCOR*, 274 Phil. 323 (1991).

[9] Section 7. *Access to Family Planning.* - All accredited public health facilities shall provide a full range of modern family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children: *Provided*. That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods: *Provided, further,* That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible: *Provided, finally,* That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344.

No person shall be denied information and access to family planning services, whether natural or artificial: *Provided,* That minors will not be allowed access to modern methods of family plan ning without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage.

[10] Sa ilalim ng R.A. 8344 (An Act Penalizing the Refusal of Hospitals and Medical Clinics to Administer Appropriate Initial Medical Treatment and Support in Emergency or Serious Cases), sinasabi na:

SECTION 2. Section 2 of Batas Pambansa Bilang 702 is hereby deleted and in place thereof, new sections 2, 3 and 4 are added, to read as follows:

"SEC. 2. For purposes of this Act, **the following definitions shall govern**:

"(a) '**Emergency**' -a condition or state of a patient wherein based on the objective find ings of a prudent medical officer on duty for the day there is **immediate danger and where delay in initial support and treatment ma y cause loss of life or cause permanent disability to the patient.** (Emphases supplied)

[11] Ayon sa lRR ng RH Law:

Section 5.21. Family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in case of non-maternity specialty hospitals and hospitals operated by a religious group, but have the option to provide such full range of modern family planning methods;Provided further, That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible; *Provided finally,* That the person is not in an emergency condition or serious case as defined in RA 8344.

Section 5.22. *Exemption of Private Hospitals from Providing Family Planning Services.* - Private health facilities shall provide a full range of modern family planning methods to clients, unless the hospital is owned and operated by a religious group, or is classi fied as a non-maternity specialty hospital, as part of their annual licensing and accreditation requirements.

In order to receive exemption from providing the full range of modern family planning methods, the health care facility must comply with the following requirements:

a) Submission of proof of hospital ownership and management by a religious group or its status as a nonmaternity specialty hospital;

b) Submission to the DOH of an affidavit stating the modem family planning methods that the facil ity refuses to provide and the reasons for its objection;

c) Posting of a notice at the entrance of the facility, in a prominent location and using a clear/legible layout and font, enumerating the reproductive health services the facility does not provide; and d) Other req uirements as determined by the DOH.

Within sixty (60) days from the effectivity of these Rules, the DOH shall develop guidelines for the implementation ofthis provision.

[12] Ayon sa JRR ng RH Law:

Section 4.06. *Access to Family Planning Information and Services*. - No person shall be denied in formation and access to family planning services, whether natural or artificial: *Provided, That* minors will not be allowed access to modem methods of family planning without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage.

Section 4.07. *Access of Minors to Family Planning Services.* - Any minor who consu lts at health care facilities shall be given age-appropriate counseling on responsible parenthood and reproductive health. Health care facilities shall dispense health products and perform procedures for family planning: *Provided, That* in public health facilities, any of the following conditions are met:

a) The minor presents written consent from a parent or guardian; or

b) The minor has had a previous pregnancy or is already a parent as proven by any one of the following circumstances, among others:

1. Written documentation from a skilled health professional;
2. Documentation through ancillary examinations such as ultrasound;
3. Written manifestation from a guardian, local social welfare and development officer, local government official or local health volunteer; or
4. Accompanied personally by a parent, grandparent, or guardian.

Provided further, That consent shall not be required in the case of abused or exploited minors, where the parent or the person exercising parental authority is the respondent, accused, or convicted perpetrator as certified by the proper prosecutorial office or the court.

Provided further, That in the absence of any parent or legal guardian, written consent shall be obtained only for elective surgical procedures from the grandparents, and in their default, the oldest brother or sister who is at least 18 years of age or the relative who has the actual custody of the child, or authorized representatives of children's homes, orphanages, and similar institutions

duly accredited by the proper government agency, among others. In no case shall consent be required in emergency or serious cases as defined in RA 8344.

Provided finally, That in case a minor satisfies any of the above conditions but is still refused access to information and/or services, the minor may direct complaints to the designated Reproductive Health Officer (RHO) of the facility. Complaints shall be acted upon immediately.

[13] Section 23. *Prohibited Acts*.-The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

(1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;

[14] Section 5.24. *Public Skilled Health Professional as a Conscientious Objector.* - In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skil led health professional shall comply with the following requirements:

a) The skilled health professional shall explain to the client the limited range of services he/she can provide;

b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;

c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client's travel arrangements and financial capacity;

d) Written documentation of compliance with the preceding requirements; and

e) Other requirements as determined by the DOH.

In the event where the public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay.

Provided, That skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules, cannot be considered as conscientious objectors.

Within sixty (60) days from the effectivity of these rules, the DOH shall develop guidelines for the implementation of this provision.

[15] Section 23. *Prohibited Acts.* - The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

(2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:

(i) Spousal consent in case of married persons: Provided, That in case of disagreement, the decision of the one undergoing the procedure shall prevail; and x x x.

[16] Section 16.01. The following acts are prohibited:

a) Any health care service provider, whether public or private, who shall:

2. Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:

i. Spousal consent in case of married persons: *Provided, That* in case of disagreement, the decision of the one undergoing the procedure shall prevail; and

[17] Section 23. *Prohibited Acts*.-The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

(2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:

x x x

(ii) Parental consent or that of the person exercising parental authority in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court. In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures and in no case shall consent be required in emergency or serious cases as defined in Republic Act No. 8344; and X X X.

[18] Section 23. *Prohibited Acts.*-The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

(3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: *Provided*, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible: *Provided, further,* That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases.

[19] Section 23. *Prohibited Acts*.-The following acts are prohibited:

(b) Any public officer, elected or appointed, specifically charged with the duty to implement the provisions hereof, who, personally or through a subordinate, prohibits or restricts the delivery of legal and medically safe reproductive health care services, including family planning; or forces, coerces or induces any person to use such services; or refuses to allocate, approve or release any budget for reproductive health care services, or to support reproductive health programs; or shall do any act that hinders the full implementation of a reproductive health program as mandated by this Act;

[20] Section 17. *Pro Bono Services for Indigent Women.* -Private and nongovernment reproductive health care service providers including, but not limited to, gynecologists and obstetricians, are encouraged to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing information and education to rendering medical services, free of charge to indigent and low-income patients as identified through the NHTS-PR and other government measures of identifying marginalization, especially to pregnant adolescents. The forty-eight (48) hours annual *pro bono* services shall be included as a prerequisite in the accreditation under the Phil Health.

[21] Section 6.11. *Pro Bono Services for Indigent Women*. - Private and nongovernment reproductive healthcare service providers including, but not limited to gynecologists and obstetricians, are encouraged to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing information and education to rendering medical services, free of charge to indigent and low-income patients as identified through the NHTS-PR and other government measures of identifying marginalization, especially to pregnant adolescents. The forty-eight (48) hours annual pro bono services shall be included as a prerequisite in the accreditation under the Phil Health.

Section 6.12. *Affidavit Attesting to Pro Bono Service*. - For purposes of the above provision, the health care providers involved in the provision of reproductive health care shall submit as part of requirements for PhilHealth accreditation a duly notarized affidavit attested to by two witnesses of legal age, following the format to be prescribed by PhilHealth, stating the circumstances by which forty-eight (48) hours of pro bono services per year have been rendered. The same shall be submitted to PhilHealth along with the other requirements for accreditation.

Section 6. 13. *Specification of Pro Bono Services*. - Reproductive health care that may be provided pro bono shall be according to the definition of reproductive health care in Section 3.01 (ss) of these Rules. Services for which PhilHealth reimbursement is being or shall be applied for by the health care provider shall not be counted as part of the forty-eight (48)-hour requirement for pro bono services.

[22] Section 3.01. For purposes of these Rules, the terms shall be defined as follows:

a) *Abortifacient* refers to any drug or device that **primarily** induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the Food and Drug Administration (FDA). (Emphasis supplied)

[23] Section 3.01. For purposes of these Rules, the terms shall be defined as follows:

j) *Contraceptive* refers to any safe, legal, effective, and scientifically proven modern family planning method, device, or health product, whether natural or artificial, that prevents pregnancy but does not **primarily** destroy a fertilized ovum or prevent a

fertilized ovum from being implanted in the mother's womb in doses of its approved indication as determined by the Food and Drug Administration (FDA). (Emphasis supplied)

[24] Section 4. *Definition of Terms.* - For the purpose of this Act, the following terms shall be defined as follows:

(a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA .

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

[26] 455 Phil. 411 (2003).

[27] ld. at 577-578.

[28] Id. at 530.

[29] Memorandum of the Office of the Solicitor General, p. 25.

[30] Decision.

[31] Article 18(3).

[32] *Braunfeld v. Brown*, 366 U.S. 599 (1961).

[33] The Limits of Conscientious Refusal in Reproductive Medicine, The American College of Obstetricians and Gynecologists, Committee on Ethics Opinion, Number 385, November 2007, Reaffirmed 2013.

[34] Id.

[35] Id.

[36] *Unethical Protection of Conscience: Defending the Powerful against the Weak, Bernard M. Dickens,* PhD, LLD, American Medical Association Journal of Ethics, September 2009, Volume II, Number 9: 725-729.

[37] Id.

[38] Decision.

[39] Section 9. T*he Philippine National Drug Formulary System and Family Planning Supplies.* - The National Drug Formulary shall include hormonal contraceptives, intrauterine dev ices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. **For the purpose of this Act, any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that *it is not to be used* as an abortifacient**. (Emphasis supplied)

[40] TSN, 6 August 2013, pp. 171-173.

[41] *Washington v. Glucksberg*, 521 U.S. 702.

[42] *Atienza v. COMELEC*, G.R. No. 188920, 16 February 2010, 612 SCRA 761.

[43] *Union Pacific Railway v. Botsford,* 141 U.S. 250.

[44] Schloendorff v. Society of New York Hospital, 105 N.E. 92.

[45] Nasusulat sa Family Code of the Philippines na:

Article 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of

disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

Naglatag ang batas ng panuntunan na sakaling hindi magkasundo ang mag-asawa sa pamamahala at pagtamasa sa kanilang ari-arian, mananaig ang pasiya ng asawang lalaki. Maihahalintulad dito ang probisyon ng RH Law na nagpapahalaga sa sariling pagpapasiya ng taong may katawan ukol sa resproductive health. Nagbibigay lamang ang batas ng kalutasan sa panahong hindi magkasundo ang mag-asawa.

[46] Decision.

[47] Id.

[48] Id.

[49] FAMILY CODE OF THE PHILIPPINES, Article 209.

[50] Id., Article 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for thei r upbringing in keeping with their means;
2) To give them love and affection, advice and counsel, companionship and understanding;
3) To provide them with moral and spiritual gu idance, inculcate in them honesty, integrity, self discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizensh ip;
4) To enhance, protect, preserve and maintain their physical and mental health at all times;
5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
6) To represent them in all matters affecting their interests;
7) To demand from them respect and obedience;
8) To impose discipline on them as may be required under the circumstances; and
9) To perform such other duties as are imposed by law upon parents and guardians. (316a)

[51] Id., Article 210.

[52] Article 228. Parental authority terminates permanently:

1) Upon the death ofthe parents;
2) Upon the death of the child; or
3) Upon emancipation of the child. (327a)

Article 229. Unless subsequently revived by a final judgment, parental authority also terminates:

1) Upon adoption ofthe child;
2) Upon appointment of a general guardian;
3) Upon judicial declaration of abandonment ofthe child in a case filed for the purpose;
4) Upon final judgment of a competent court divesting the party concerned of parental authority; or
5) Upon judicial declaration of absence or incapacity of the person exercising parental authority. (327a) Article 230. Parental authority is suspended upon con viction of the parent or the person exercisi ng the sa me of a crime which carries with it the penalty of civil interdiction. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender. (330a)

Article 231. The court in a n action filed for the purpose or in a related case may also suspend parental authority if the parent or the person exercising the same:

1) Treats the child with excessive harshness or cruelty;
2) Gives the child corrupting orders, counsel or example;
3) Compels the child to beg; or
4) Subjects the child or allows him to be subjected to acts of lasciviousness.

The grounds enumerated above are deemed to incl ude cases which have resulted from culpable negligence of the parent or the person exercising parental authority.

If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or adopt such other measures as may be proper under the circumstances. The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceedi ng if the court finds that the

cause therefor has ceased and will not be repeated. (332a)

Article 232. If the person exercising pa rental authority has subjected the child or allowed him to be su bjected to sexual abuse, such person shall be permanently deprived by the court of such authority. (n)

[53] Decision.

[54] Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context ofthe Convention on the Rights ofthe Child , U.N. Doc. CRC/GC/2003/4 (2003).

[55] Section 14. Age- and Development-Appropriate Reproductive Health Education. - The State shall provide age- and development-appropriate reproductive health education to adolescents which shall be taught by adequately trai ned teachers in formal and nonformal educational system and integrated in relevant subjects such as, but not limited to, values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood: Provided, That flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents teachers-community associations, school officials and other interest groups. The Department of Education (DepEd) shall formulate a curriculum which shall be used by public schools and may be adopted by private schools.(Emphasis supplied)

[56] Joint Memorandum (Of Respondent House of Representatives and Respondent-Intervenor Rep. Edcel C. Lagman), pp. 57-58.

[57] General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4 (2003).

[58] Id.

[59] Id.

[60] *Estampa, Jr. v. City Government of Davao,* G.R. No. 190681, 21 June 2010, 621 SCRA 350.

[61] CONSTITUTION, Article XI, Section 1; *Amit v. Commission on Audit,* G.R. No. 176172, 20 November 2012; *San Jose, Jr. v. Camurongan,* 522 Phil. 80 (2006).

[62] *Biraogo v. The Philippine Truth Commission* of 2010, G.R. Nos. 192935 and 193036, 7 December 2010, 637 SCRA 78.

[63] *Quinto v. COMELEC,* G.R. No. 189698, 22 February 2010, 613 SCRA 385.

[64] Section 4(q).

[65] Id.

[66] Ang kahulugan ng reproductive health ay "*a state of com plete physical, mental and social well-being and not merely the absence of disease or infirmity in all matters relating to the re productive syst em and to iyts functions and processes. "*

CONCURRING OPINION

CARPIO, *J.*:

I concur in the *ponencia* of Justice Jose Catral Mendoza. However, my opinion is that at this stage, the Court is simply not competent to declare when human life begins, whether upon fertilization of the ovum or upon attachment of the fertilized ovum to the uterus wall. The issue of when life begins is a scientific and medical issue that cannot be decided by this Court without the proper hearing and evidence. This issue has not even been settled within the scientific and medical community.

R.A. No. 10354,. however, protects the ovum upon its fertilization without saying that life begins upon fertilization. This should be sufficient for purposes of resolving this case - for whether life begins upon fertilization or upon implantation of the fertilized ovum on the uterus wall, R.A. No. 10354 protects ***both*** asserted starting points of human life. Absent a definitive consensus from the scientific and medical community, this Court cannot vent.ure to pronounce which starting point of human life is correct. We

can only reiterate what Section 12, Article II of the Constitution provides, that the State shall "equally protect the life of the mother and the life of the unborn from conception x x x."

Section 12, Article II of the Constitution is repeated in Section 2 of R.A. No. 10354. The law does not provide a definition of conception. However, the law is replete with provisions that embody the policy of the State to protect the travel of the fertilized ovum to the uterus wall. In fact, the law guarantees that the State will provide access only to "medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive health care services, methods, devices, supplies **which do not prevent the implantation of a fertilized ovum** as determined by the Food and Drug Administration."[1] R.A. No. 10354 protects the fertilized ovum by prohibiting services, methods, devices or supplies that prevent its implantation on the uterus wall.

Accordingly, I concur in the *ponencia* of Justice Jose Catral Mendoza.

---

[1] Section 2(d), second paragraph, R.A. No 10354

SEPARATE CONCURRING OPINION

BRION, J.:

I submit this Separate Concurring Opinion to reflect my views on selected constitutional issues submitted to the Court.

I agree with the ponencia's conclusion that the petitions before the Court are ***ripe for judicial review***, but I do so under a ***fresh approach*** that meets head-on the recurring problems the Court has been meeting in handling cases involving constitutional issues. My discussions on this point are likewise submitted to reply to the position of Mr. Justice Marvic Leonen that the petitions are not appropriate for the exercise of the Court's power of judicial review.

I also agree with the *ponencia* that the Reproductive Health (*RH*) law protects and promotes the right to life by its continued prohibition on abortion and distribution of abortifacients. I exclude from this concurrence ***Section 9 of the RH law and its Implementing Rules and Regulation (IRR)*** which, in my view, fail in their fidelity to the constitutional commands and to those of the RH Law itself; for one, they fail to adopt the principle of double effect under Section 12, Article II of the 1987 Constitution ("*Section 12*").

For these reasons, I cannot wholly agree that the RH Law is fully protective of the unborn from conception. I submit, too, that the Court should formulate **guidelines** on what the government can actually procure and distribute under the RH law, consistent with its authority under this law and Section 12, Article II to achieve the full protection the Constitution envisions.

I also agree that the challenge to Section 14 of the RH Law is premature. However, I submit my own views regarding the mandatory sex education in light of the natural and primary right of parents to raise their children according to their religious beliefs. My discussion on this topic also responds to the position of Mr. Justice Bienvenido Reyes that the challenge to the constitutionality is ripe and that the government has a compelling interest in enacting a mandatory sex education program.

Lastly, I find the RH law's Section 23(a)(1), which penalizes healthcare providers who "knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health" to be unconstitutional for violating the freedom of speech.

For easy reference and for convenience, this Opinion shall proceed under the following structure:

I. **Preliminary Considerations**

A. The petitions are **ripe for judicial review**: the fresh approach under the 1987 Constitution

a. The Historical Context of Judicial Power

b. Analysis of Section 1, Article VIII of the 1987 Constitution.

b.1. The Power of Judicial Review
b.2. The New and Expanded Power

B. The Three Types of Adjudicative Judicial Power

C. The Court is **duty bound** to resolve the present petitions, not merely dismiss them.

II. **Substantive Discussions**

A. **The RH Law does not fully protect the right to life of the unborn child**

a. Overview

i. The primacy of life in the Philippine context

b. The 1987 Constitution

i. The status of the unborn under the 1987 Constitution

ii. The constitutional meaning of conception and to whom this right to life extends

iii. Section 12, Article II of the 1987 Constitution as a self-executing provision

B. Section 12, Article II of the 1987 Constitution and *Roe v. Wade*

C. Abortion, abortifacients and the RH Law

D. The RH law's definition of abortifacient textually complies with Section 12, Article II, 1987 Constitution

E. The principle of double effect

i. The role of the DOH
ii. Guidelines

F. **Parental Rights**

a. Parental rights in the Filipino context

b. Parental rights and the State's interest in the youth
c. The state has failed to show a compelling State interest to override parental rights in reproductive health education
d. The question on Section 14's constitutionality is premature

G. **Disturbing observations and concerns: The Effects of Contraceptives on national, social and cultural values**

H. **Freedom of Expression of Health Practitioners and the RH Law**

I. Preliminary Considerations

A. The petitions are ripe for judicial review: the fresh approach under the 1987 Constitution

I **submit that the petitions are ripe for judicial review**. My approach is anchored on a **"fresh" look at the 1987 Constitution** and the innovations it introduced on the Judicial Department, specifically, on the expansion of the Court's adjudicative "judicial power."

a. The Historical Context of Judicial Power.

The **1935 Constitution** mentioned the term "**judicial power**" but did not define it. The Constitution simply located the seat of this power *"in one Supreme Court and in such inferior courts as may be established by law."*

The **1973 Constitution**, for its part, did not substantially depart from the 1935 formulation; it merely repeated this same statement and incorporated part of what used to be another section in the 1935 Constitution into its Section 1. Thus, Section 1 of the Article on the Judicial Department of the 1973 Constitution provided:

> The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law. The National Assembly shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section five thereof.

The **1987 Constitution**, in contrast with the preceding Constitutions, substantially fleshed out the meaning of "judicial power," not only by confirming the meaning of the term as understood by jurisprudence up to that time, but by going beyond the accepted jurisprudential meaning of the term. The changes are readily apparent from a plain comparison of the provisions. The same Section 1 under Judicial Department (Article VIII) now reads:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

> Judicial power **includes** ***the duty of the courts of justice*** **to settle** ***actual controversies*** involving ***rights which are legally demandable and enforceable***, AND to determine whether or not there has been ***a grave abuse of discretion*** amounting to lack or excess of jurisdiction on the part of ***any branch or instrumentality of the Government.*** (emphasis and underscoring supplied)

b. Analysis of Section 1, Article VIII of the 1987 Constitution.

This simple comparison readily yields the reading – through the repetition of the sentence that both the 1935 and the 1973 Constitutions contained – that the 1987 Judiciary provisions retain the same "judicial power" that it enjoyed under the 1935 and the 1973 Constitutions.

In addition, the 1987 Constitution, through the 2nd paragraph of its Section 1, confirms that judicial power is wider than the power of adjudication that it traditionally carried (*by using the word "includes"*) and at the same time incorporated the basic *requirements for adjudication* in the traditional concept, namely, the presence of *"actual controversies,"* based on *"rights which are legally demandable and enforceable."*

The confirmation expressly mentions that the power is granted to ***"courts of justice"*** and, aside from being a power, is imposed as a ***duty of the courts***. Thus, the Constitution now lays the courts open to the charge of failure to do their constitutional duty when and if they violate the obligations imposed in Section 1, Article VIII of the 1987 Constitution.

Section 5, Article VIII of the 1987 Constitution further fleshes out the irreducible "powers" of the Supreme Court[1] in terms of its ***original, appellate,*** and ***review adjudicative powers*** and its other non-adjudicative powers.[2] In so doing, Section 5 also confirmed the extent of the constitutionally-granted adjudicative power of the lower courts that Congress has the authority to create (by defining, prescribing and apportioning their jurisdictions[3]), as well as the grant of ***administrative, executive and quasi-legislative powers*** to the Supreme Court, all within the sphere of its judicial operations.

Section 5 now provides:

> SECTION 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.
>
> (2) Review, revise, reverse, modify, or affirm on ***appeal or certiorari,*** as the ***law or the Rules of Court may provide***, final judgments and orders of lower courts in:
>
> (a) All cases in which the ***constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation*** is in question.
>
> (b) All cases involving the ***legality of any tax, impost, assessment, or toll,*** or any penalty imposed in relation thereto.
>
> (c) All cases in which the ***jurisdiction of any lower court*** is in issue.
>
> (d) All ***criminal cases*** in which the penalty imposed is reclusion perpetua or higher.
>
> (e) All cases in which only an ***error or question of law*** is involved.
>
> (3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.
>
> (4) Order a change of venue or place of trial to avoid a miscarriage of justice.
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the

underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

b.1. <u>The Power of Judicial Review</u>.

In the process of making "judicial power" more specific and in outlining the specific powers of the Supreme Court, the Constitution made express the ***power of "judicial review,"*** *i.e.*, the power to pass upon the ***constitutional validity*** of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation,[4] as the *"law or the Rules of Court may provide."*

This formulation recognizes that the Supreme Court, even before the 1987 Constitution came, already had workable rules of procedure in place for the courts. These rules cover ordinary actions, special civil actions, special proceedings, criminal proceedings, and the rules of evidence in these proceedings, all of which the 1987 Constitution recognized when it mentioned the Rules of Court, but subject to the Supreme Court's *power of amendment.*

b.2. <u>The New and Expanded Power</u>.

Still **another addition**, a completely new one, to the concept of judicial power under the 1987 Constitution is **the power *"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.*"**[5] This new power is innovative since its recognition is separate from the traditional adjudicative power that Section 1 earlier confirms and which Section 5 in part fleshes out.

It is likewise a definitive expansion of judicial power as its exercise is not over the traditional justiciable cases handled by judicial and quasi-judicial tribunals. Notably, judicial power is extended **over the very *powers exercised by other branches or instrumentalities of government*** when grave abuse of discretion is present. In other words, the expansion empowers the judiciary, ***as a matter of duty***, to inquire into acts of lawmaking by the legislature and into law implementation by the executive when these other branches act with grave abuse of discretion.

This expansion takes on special meaning when read with the powers of the Court under Section 5, particularly in relation with the Court's power of ***judicial review****, i.e., the power to declare a treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordination or regulation unconstitutional.*

Under the expanded judicial power, justiciability expressly depends ***only*** on the presence or absence of grave abuse of discretion, as distinguished from a situation where the issue of constitutional validity is raised within a traditionally justiciable case where the elements of actual controversy based on specific legal rights must exist. In fact, even *if the requirements for strict justiciability are applied,* these requisites can already be taken to be present once grave abuse of discretion is *prima facie* shown to be present.

In the process of lawmaking or rulemaking, for example, an *actual controversy* is already present when the law or rule is shown to have been attended by grave abuse of discretion because it was passed; it operates; or its substantive contents fall, outside the contemplation of the Constitution.[6] This should be contrasted with allegations of constitutional invalidity in the traditional justiciable cases where, by express constitutional requirement, the elements of (1) actual controversy involving (2) demandable and enforceable rights, must be present because what essentially comes to court is the traditional justiciable case, interwoven with constitutional validity questions.

In the expanded judicial power, any citizen of the Philippines to whom the assailed law or rule is shown to apply necessarily has ***locus standi*** since a constitutional violation constitutes an affront or injury to the affected citizens of the country. If at all, a less stringent requirement of locus standi only needs to be shown to differentiate a justiciable case of this type from the pure or mere opinion that the courts cannot render.

Necessarily, too, ***a matter is ripe*** for adjudication if the assailed law or rule is already in effect. The traditional rules on ***hierarchy of courts*** and ***transcendental importance***, far from being grounds for the dismissal of the petition raising the question of unconstitutionality, may be reduced to rules on the level of court that should handle the controversy, as directed by the Supreme Court.

Thus, when grave abuse of discretion amounting to a clear constitutional violation is alleged and preliminarily shown, the Supreme Court is duty-bound to take cognizance of the case, or at least to remand it to the appropriate lower court, based on its consideration of the urgency, importance or evidentiary requirements of the case.

B. <u>The three types of Adjudicative Judicial Powers.</u>

In sum, judicial power, as now provided under the 1987 Constitution, involves three types of controversies, namely:

(1) the **traditional justiciable cases** involving actual disputes and controversies based purely on demandable and enforceable rights;

(2) the **traditional justiciable cases** as understood in (1), but ***additionally involving*** **jurisdictional and constitutional issues**;

(3) **pure constitutional disputes** attended by **grave abuse of discretion** in the process involved or in their result/s.

The **first two types** are already covered by the Rules of Court that, as recognized by Section 5, are already in place, subject to the amendments that the Supreme Court may promulgate.

The **third type** may inferentially be covered by the *current* provisions of the Rules of Court, specifically by the rules on *certiorari, prohibition* and *mandamus* but, strictly speaking, requires special rules that the current Rules of Court do not provide since the third type does not involve disputes arising as traditionally justiciable cases. Most importantly, the third type *does not involve judicial or quasi-judicial exercise of adjudicative power* that the Supreme Court has traditionally exercised over lower tribunals[7] to ensure that they stay within the confines of their adjudicative jurisdiction.

In the petitions now before us, these new realities on judicial power necessarily must be considered as the petitions allege actions by the legislature and by the executive that lie outside the contemplation of the Constitution. Specifically, they involve the constitutionally infirm provisions of the RH Law passed by Congress and of the IRR of the law that the executive promulgated through the Department of Health.

To be sure, the absence of specifically applicable rules cannot be a judicial excuse for simply bodily lifting the rules for the traditional justiciable cases which the present cases are not. In fact, the Court should not even be heard to give an excuse as it is not undertaking a power that it may exercise at its discretion; the Court is discharging an express duty imposed by the Constitution itself.

In providing for procedural parameters, the Court may not simply hark back to jurisprudence ***before*** the 1987 Constitution as they will not obviously apply, nor to jurisprudence ***after*** the 1987 Constitution that failed to recognize the third type of justiciable controversy for what it is.

Thus, in the present case, the Court must be guided strictly by the express constitutional command. If past jurisprudence will be made to apply at all, they should be closely read and adjusted to the reality of the third or new type of judicial adjudicative power.

C. The Court is duty bound to resolve the present petitions, not simply dismiss them.

The consolidated petitions before the Court raise several ***constitutional challenges*** against the RH Law, ranging from violations of the right to life of the unborn (and, concomitantly, of the constitutional prohibition against abortion); violations of the freedom of religion and of speech; violations of the rights of parents and protected familial interests; down to the mostly benign allegations of violation of natural law.

An important and insightful approach is the petitioners' attack on the RH law by considering it as a ***population control measure*** that is beyond the power of the government to carry out. The respondents parry this attack by arguing that whatever impact the RH law would have on the population would only be incidental, as the main target of the law is to recognize and enhance the reproductive health rights of women. **I agree with the *ponencia's* analysis of what the RH Law really is, and adopt this analysis and conclusion for purposes of my own discussions in this Opinion.**

This snapshot of the petitions strongly shows how the economic, social, cultural and religious dimensions of the RH law cut a swath through the traditional legal and constitutional realm of adjudication. It is no surprise that it took the RH bill fourteen years in Congress before it was enacted into law.

The sharp divide between the law's proponents' and opponents' views and beliefs on the propriety of the RH law, within and outside its legal and constitutional dimensions, reflect the law's encompassing impact: its ***implementation*** could, quite possibly, change the face of Philippine society as we know it today. In fact, in this Separate Opinion, I add my own nagging concerns and observations although I know that these may go into the wisdom of the law and are not appropriate for adjudication. I do this, however, in the name of judicial license that should allow me, as a citizen, to express my own personal observations on the dispute at hand.

Indeed, if the RH law seeks to bring about strong, socio-political and economic changes even at the price of our historical identity, culture and traditions, then so be it, ***but the affected public should know the impact of the issues that soon enough will confront the nation.*** It is important, too, that changes should not come at the expense of the provisions of the Constitution – the only document that holds the nation together "during times of social disquietude or political excitement," as in the present case. This should not be lost on us, as a Court, and should be a primary consideration in our present task.

At the core of the petitions is the RH law's alleged violation of the right to life of the unborn. I view the unborn's right to life within the much broader context of Article II, Section 12 of the 1987 Constitution *recognizing* the sanctity and autonomy of

familial relations and the natural and primary parental right in child-rearing, on the one hand, and Article XV, Sections 1 and 3, recognizing the key role of the family, on the other.

These constitutional provisions serve as the compass guiding this Opinion and should in fact serve as well for the Court's own decision-making. Even those in the political departments of government should pay them heed, separately from the political and economic considerations that, from the terms of the RH law and its IRR, obviously served as the political departments' driving force.

Under our constitutional regime, the judicial department is the only organ of government tasked to guard and enforce the boundaries and limitations that the people had put in place in governing themselves. This constitutional duty of the Court has been ***expanded*** by the additional power of judicial review under the 1987 Constitution 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."

These are awesome powers carrying deep and far-ranging duties that we can only discharge while fully aware of their accompanying responsibilities and pre-ordained limits. The present Court, I am sure, is fully aware of the extent of these duties and the limitations, particularly of the rule that we cannot set new polices nor seek to implement current ones as these involve roles that are not constitutionally ours to undertake.

I am aware, too, that the RH Law now before us carries multi-dimensional repercussion, not all of them within the legal and constitutional realms. These realities, however, should not leave us timid in undertaking our tasks; for as long as we act within the confines of our constitutionally-defined roles, we cannot go wrong.

A sure measure to best ensure proper action is to consider the petitions ***under the third type of judicial adjudications power (defined above) that we first consciously utilize under the present Constitution***. In this way, we give full respect to the separation of powers; we step in only when the legislative and the executive step out of the bounds defined for them by the Constitution.

For all these reasons, I join the ponencia's result in its ruling that a controversy exists appropriate for this Court's *initial consideration* of the presence of grave abuse of discretion, and *consequent adjudication* if the legislative and executive actions can be so characterized.

II. Substantive Discussions

A. The RH Law does not fully protect the right to life of the unborn child.

a. Overview

The 1987 Constitution has implicitly recognized the right to life of the unborn child under its Section 12 when it gave the mandate, under the Section's second sentence, to protect the unborn life from its conception, equally with the life of mother.

I agree with the *ponencia's* conclusion that under Section 12, the conception that the Constitution expressly speaks of, occurs upon fertilizations of the ovum. Thus, the RH law cannot be faulted in its definition of an ***abortifacient*** to be *any drug or device that kills or destroys the fertilized ovum or prevents its implantation in the uterus*.

I ***slightly*** differ, however, from the way the *ponencia* arrived at its conclusion. To me, the Constitution never raised the question of "when life begins";[8] in fact, this is a question that the framers of the Constitution sensibly avoided by simply adopting the formulation "*the life of the unborn from conception.*" Interestingly, they even dropped the term "moment of conception" since this precise moment cannot be determined with certainty. The answer the framers decided upon (reinforced by undisputed medical authorities) and which they hope future constitutional leaders and decision-makers will grasp and respect is that ***once the sperm cell and the egg cell unite (resulting in the combination of their genetic materials to form the fertilized egg or the zygote)***,[9] ***the protection intended for the unborn should be triggered with full force.*** I write this Opinion with full respect for this hope.

Thus, I agree with the ponencia that the RH law protects and promotes the right to life of the unborn by its continued prohibition on abortion and distribution of abortifacients. I do recognize, however, that while the RH law generally protects and promotes the unborn's right to life, its ***Section 9 and its IRR fail in their fidelity to the Constitution and to the very terms of the RH Law itself. For one, it fails to adopt the principle of double effect under Section 12, Article II of the 1987 Constitution,*** as more fully discussed below.

For these reasons, I cannot wholly concur that the ***RH law and its IRR***, as they came to this Court, were fully protective of the right to life of the unborn. In fact, the Court should lay down guidelines, culled from a constitutionally-valid RH Law, of what the government can actually procure and distribute under the RH law, consistent with its authority under this law and Section 12, Article II of the Constitution.

i. The primacy of life in the Philippine context

The primacy of life from its earliest inception is a constitutional ideal *unique* to the 1987 Philippine Constitution. While our system of government of tripartite allocation of powers (Articles VI to VIII), the concept of our Bill of Rights (Article III) and even the traditional concept of judicial review (Section 1, Article VIII) may have been of American origin, the idea of life itself as a fundamental constitutional value from its earliest inception carries deep roots in the Philippine legal system.

The idea of life as a fundamental constitutional value from its earliest inception is not of recent vintage although our previous constitutions did not have a provision equivalent to the present Section 12, Article II. Our legal history shows that abortion laws have been in existence even during the Spanish regime when the Spanish Penal Code was made applicable in the Philippines. When the Revised Penal Code was enacted in 1930, the life of the unborn was also considered by suspending the execution of the death sentence[10] on a *pregnant* woman. Under the New Civil Code of 1950, an unborn child is granted ***presumptive personality*** from the time of its conception for civil purposes that are favorable to it, although subject to the condition that it be born later.[11] To a certain extent, this presumptive personality is already recognized under our penal laws. Under Title I (Crimes Against Persons), Chapter 8 (Destruction of Life) of the Revised Penal Code, the killing of viable, and even non-viable, fetuses may result in criminal liability.[12]

The continued efficacy of these statutory provisions evidences our society's high regard for the life of the unborn; thus, our present Constitution allows us to disregard it only for the equally paramount necessity of saving the life of the unborn's mother. It also reflects not only our society's recognition of and respect for the life of the unborn as a Filipino ideal to be pursued under the 1987 Philippine Constitution, but of the country's own cultural values as a people.[13]

That this same respect is now *expressly* provided under the 1987 Constitution is not so much for the purpose of creating a right, but for the purpose of strengthening the protection we extend to the unborn life against varied external threats to it.[14] It would indeed be ***very ironic*** if the threat would come from our own government via the abortifacients it hopes to distribute under the RH Law's IRR.

b. The 1987 Constitution

i. The status of the unborn under the 1987 Constitution

Although the framers of the Constitution expressly recognized the unborn's right to life from conception, they did not intend to give the unborn the status of a person under the law.

Instead, the framers distinguished between the unborn's right to life and the rights resulting from the acquisition of legal personality upon birth in accordance with law. Unlike the rights emanating from personhood, the right to life granted to the unborn is in itself complete from conception, unqualified by any condition.

Although Section 12, Article II of the Constitution does not consider the unborn a person, its terms reflect the framers' clear intent to convey an utmost respect for human life[15] that is not merely co-extensive with civil personality.[16] This intent requires the extension of **State protection** to the life of the unborn from conception. To be precise, Section 12, Article II of the 1987 Constitution provides:

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

ii. The constitutional meaning of conception and to whom is this right to life extended

Unlike the *ponencia*, I take the view that the question of *when the life of the unborn begins* cannot strictly be answered with reference to time, *i.e.*, the exact time the sperm cell fertilized the egg cell. But other than this uncertainty, the germinal stage[17] of prenatal development[18] that transpires (after the union of the sperm cell and the egg cell and the combination of their genetic material materialized to form the fertilized egg or the zygote) is not debatable.

Upon fertilization, a complex sequence of events is initiated by the zygote to establish the molecular conditions required for continued embryonic development. **The behavior of the zygote** at this point is radically unlike that of either sperm or egg separately; it exhibits signs of independent life **characteristic of a human organism.**[19]

Since the constitutional intent is to protect the life of the unborn, and the fertilized egg (or the zygote) already exhibits signs and characteristics of life, then this fertilized egg is already entitled to constitutional protection. I say this even if this fertilized egg may not always naturally develop into a baby or a person.

I submit that for purposes of constitutional interpretation, every doubt should be resolved in favor of life, as this is the rule of

life, anywhere, everywhere; any doubt should be resolved in favor of its protection following a deeper law that came before all of us – the law commanding the preservation of the human specie. This must have been the subconscious reason why even those who voted against the inclusion of the second sentence of Section 12 in Article II of the Constitution conceded that a fertilized ovum - the word originally used prior to its substitution by the word "unborn" - is possessed of human life although they disagreed that a *right* to life itself should be extended to it in the Constitution.[20]

It is in these lights that I dispute the Solicitor General's argument that Congress' determination (that contraceptives are not abortifacients) is entitled to the highest respect from this Court since it was arrived at after receiving, over the years, evidence, expert testimonies and position papers on the distinction between contraceptives and abortifacients.

The Solicitor General argues that even assuming medical uncertainty on the mechanisms of contraceptives and Intrauterine Devises in view of the contrary opinions of other medical experts, this uncertainty does not prevent Congress from passing the RH law because legislative options "in areas fraught with medical and scientific uncertainties" must be "especially broad" and calls for judicial deference until an actual case exists.

I cannot agree with the implied assertion that Congress' determination that contraceptives are not abortifacients is binding on the Court.

First, the nature of a particular contraceptive to be distributed by the government under the RH law still has to be determined by the FDA and any advance recognition by Congress of its abortifacient or non-abortifacient character would be premature.

Second, as will be discussed shortly, the statutory meaning of "abortifacient," on which the constitutional acceptability of a contraceptive depends, must depend in the first place on the extent of the prohibition defined in the Constitution, not as defined by Congress.[21]

Third, and more importantly, while US case law has established Congress' broad discretion in areas where medical uncertainty exists, none of these cases[22] involved a challenge on congressional discretion and its collision with a specific constitutional provision protecting the life of the unborn from conception. This aspect of the present cases uniquely distinguishes them from the cases cited by the respondents. In the same vein, the specific provisions unique to the 1987 Constitution limit the applicability of parallel US jurisprudence in resolving issues through solutions consistent with our own "aspirations and ideals" as a nation and our own tradition and cultural identity as a people.

Fourth and last, this Court cannot be deferential to any official, institution or entity, in the discharge of the Court's duty to interpret the Constitution, most specially when the existence of the most important physical and spiritual being on earth – humankind – is at stake. Let it not be said hereafter that this Court did not exert its all in this task. When – *God forbid*! – fetuses begin dying because abortifacients have been improvidently distributed by government, let not the blame be lain at the door of this Court.

iii. Section 12, Article II of the 1987 Constitution as a self-executing provision

The respondents argue that the recognition of a right under the Constitution does not automatically bestow a right enforceable through adjudication. Thus, they claim that Section 12, Article II of the 1987 Constitution is not a self-executing provision; while this Section recognizes the right to life of the unborn child, it leaves to Congress the discretion on how it is to be implemented. The RH law actually embodies the exercise of Congress' prerogative in this area when it prohibited abortion and access to abortifacients.

I submit that the mandate to equally protect the life of the mother and the life of the unborn child from conception under Section 12, Article II of the Constitution is ***self-executing to prevent and prohibit the state from enacting legislation that threatens the right to life of the unborn child.***

To my mind, Section 12, Article II should not be read narrowly as a mere policy declaration lest the actual intent of the provision be effectively negated. While it is indeed a directive to the State to equally protect the life of the mother and the unborn child, this command cannot be accomplished without the corollary and indirect ***mandate to the State to inhibit itself*** from enacting programs that contradict protection for the life of the unborn.

Read closely, the second paragraph of Section 12, Article II contains two mandates for the State to comply with:

First, it contains a ***positive command*** for the State to enact legislation that, in line with the broader context of protecting and strengthening the Filipino family, recognizes and protects equally the life of the unborn child and the mother. It is within this context that Congress enacted the RH Law's provisions,[23] as well as prior laws[24] that provide healthcare measures for the mother and her child during and after pregnancy.

Second, Section 12, Article II provides a ***negative command*** against the State to refrain from implementing programs that threaten the life of the unborn child or that of the mother. This is a constitutional directive to the Executive Department.

By commanding the State to equally protect the life of the unborn child and the life of the mother, the Constitution not only recognizes these rights, but provides a minimum level of protection in the case of the unborn child. In effect, the Constitution prohibits the State from implementing programs that are contrary to its avowed policies; in the case of the unborn child, the State cannot go lower than the minimum level of protection demanded by the Constitution.

In concrete terms, the State cannot, ***in the guise of enacting social welfare legislation,*** threaten the life of the unborn child after conception. The State recognizes the right to life of the unborn child from conception, and this should not be imperiled by the State itself in the course of reproductive health programs that promote and provide contraceptives with abortifacient properties. In more specific terms under the circumstances of this case, the State cannot, through the legislature, pass laws seemingly paying respect and rendering obedience to the Constitutional mandate while, through the executive, promulgating Implementing Rules and Regulations that deviously circumvent the Constitution and the law.

To recapitulate, the State, through Congress, exercises full authority in formulating programs that reflect the Constitution's policy directive to equally protect the life of the mother and the unborn child and strengthen the Filipino family while the Executive carries the role of implementing these programs and polices. This discretion, however, is limited by the flipside of Section 12, Article II's directive – *i.e.,* these programs cannot contradict the equal protection granted to the life of the unborn child from conception and the life of the mother.

I now proceed to my reading and appreciation of whether the right to protection, both of the mother and the unborn, are fully respected under the RH law.

At the outset, I note that both the petitioners and the respondents agree that Section 12, Article II of the 1987 Constitution prohibits abortion in the Philippines. This point of agreement not only strengthens my argument regarding the self-executing nature of the negative command implicit in the provision, but also sets the stage for the point of constitutional query in the present case.

To me, the question in the present case involves the scope of the level of protection that Section 12, Article II recognizes for the unborn child: to what extent does Section 12, Article II of the 1987 Constitution protect the unborn's right to life? And does the RH Law comply with the protection contemplated under this constitutional provision?

According to the OSG, the RH law does not violate the right to life provision under the Constitution because the law continues to prohibit abortion and excludes abortifacients from the provision of access to modern family planning products and device. By anti-abortion, the public respondents meant preventing the Supreme Court from creating a Roe v. Wade rule – a rule that granted women the right to terminate pregnancy under the trimestral rule.

c. Section 12, Article II of the 1987 Constitution and Roe v. Wade

I submit that the scope and level of protection that Section 12, Article II of the 1987 Constitution is deeper and more meaningful than the prohibition of abortion within the meaning of *Roe v. Wade.*

In the landmark case of *Roe v. Wade*, a Texas statute made it a crime to procure or attempt an abortion except when necessary to save the life of the mother. After discussing abortion from a historical perspective, the US Supreme Court noted the three reasons behind the enactment of criminal abortion laws in the different states in the United States, *viz: first,* the law sought to discourage illicit sexual conduct – a reason that has not been taken seriously; *second*, since the medical procedure involved *was* then hazardous to the woman, the law seeks to restrain her from submitting to a procedure that placed her life in serious jeopardy; *third,* the law advances the State's interest in protecting prenatal life[25] - a reason that is disputed because of the absence of legislative history that supports such interest. The Court said that "it is with these interests, and the weight to be attached to them, that this case is concerned." Unhesitatingly, the US Supreme Court struck down the law as unconstitutional and ruled that the right to privacy extends to a pregnant woman's decision whether to terminate her pregnancy.[26] It observed:

> This right of privacy, xxx is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. **The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent.** Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

Among the cases that Roe cited in support of its ruling, anchored on the right to privacy, are the cases of *Griswold v. Connecticut*[27] and *Eisenstadt v. Baird*.[28] In *Griswold*, the Court invalidated a Connecticut law that made it a crime to use and abet the use of contraceptives for violating a married couples' right to privacy. In *Eisenstadt*, the Court extended the protection of the right to privacy even to unmarried individuals by invalidating a Massachusetts law that penalized anyone who distributed

contraceptives except if done by a physician to married couples.[29]

While *Roe* recognized the state's legitimate interest in protecting the pregnant woman's health and the potentiality of human life, it considered the pregnant woman's decision to terminate her pregnancy *prior* to the point of fetal viability (under a trimestral framework[30]) as a liberty interest that should *prevail* over the state interest.

Apart from the context in which the U.S. decision is written, a reading of the second sentence of Section 12, Article II, in light of the framers' intent in incorporating it in the Constitution, reveals more distinctions from Roe than what the public respondents claim.

The framers did not only intend to prevent the **Supreme Court** from having a Philippine equivalent of a *Roe v. Wade* decision, [31] they also unequivocally intended to deny Congress the power to determine that only at a certain stage of prenatal development can the constitutional protection intended for the life unborn be triggered.[32] In short, the clear intent of the Framers was to prevent both ***Congress and the Supreme Court*** from making abortion possible.

Indeed, in discussing the third reason for the enactment of a criminal abortion law, *Roe* avoided any reliance on the theory that life begins at conception, much less on the principle that accompanies the theory that there must be a protected right to life at that stage. Instead the U.S. Supreme Court merely deferred to the State's legitimate interest in potential life. In the 1987 Philippine Constitution, by inserting the second sentence of Section 12, Article II, the framers sought to make an express rejection of this view in Roe.

Thus, while this Court or Congress cannot conclusively answer the question of "when life begins" as in *Roe*, Philippine constitutional law rejects the right to privacy as *applied in Roe* by granting a right to life to the unborn (even as a fertilized egg or zygote) instead of gratuitously assuming that the State simply has an interest in a potential life that would be subject to a balancing of interest test other than the interest that the Constitution expressly recognizes.

Interestingly, in *Carey v. Population Services, Int'l.*,[33] in striking down a New York law criminalizing the sale, distribution[34] and advertisement of nonprescription contraceptives, the US Supreme Court clarified that they so rule "not because there is an independent fundamental 'right of access to contraceptives,' but because such access is essential to the exercise of the constitutionally protected right of decision in matters of childbearing that is the underlying foundation of the holdings in *Griswold, Eisenstadt v. Baird*, and *Roe v. Wade*." Accordingly, the State cannot pass a law impeding its distribution on pain of prosecution. *No such law is involved in the present case.*

In Planned *Parenthood v. Casey*,[35] the US Supreme Court reaffirmed the "central holding" in *Roe v. Wade,* among others, that the State has legitimate interests *from the outset of the pregnancy* in protecting the health of the woman and the life of the fetus that may become a child.[36] In the Philippine jurisdiction, these legitimate interests rest on a higher and stronger ground not only because they are commanded by our Constitution but because these legitimate interests were made ***to extend to the life of the unborn from conception***. The mandatory command of the Constitution to protect the life of the unborn by itself limits the power of Congress in enacting reproductive health laws, ***particularly on subsidizing contraceptives.***

d. Abortion, abortifacients and the RH Law

As I earlier noted, both petitioners and the respondents agree that Section 12, Article II of the 1987 Constitution prohibits abortion. As to what abortion is and when pregnancy is established, the Medical Experts' Declaration cited by the respondents themselves is instructive:

1. xxx
2. xxx
3. All contraceptives, including hormonal contraceptives and IUDs, have been demonstrated by laboratory and clinical studies, to act primarily prior to fertilization. Hormonal contraceptives prevent ovulation and make cervical mucus impenetrable to sperm. Medicated IUDs act like hormonal contraceptives. Copper T IUDs incapacitate sperm and prevent fertilization.
4. The thickening or thinning of the endometrium (inner lining of the uterus) associated with the use of hormonal contraceptives has not been demonstrated to exert contraceptive action, i.e. if ovulation happens and there is fertilization, **the developing fertilized egg (blastocyst) will implant and result in a pregnancy (contraceptive failure)**. In fact, blastocysts have been shown to implant in inhospitable sites without an endometrium, such as in Fallopian tubes.
5. **Pregnancy can be detected and established** using currently available laboratory and clinical tests – e.g. blood and urine levels of HCG (Human Chorionic Gonadotrophin) and ultrasound – **only after implantation of the blastocyst.** While there are efforts to study chemical factors associated with fertilization, currently there is no test establishing if and when it occurs.
6. **Abortion is the termination of an established pregnancy** before fetal viability (the fetus' ability to exist independently of the mother). Aside from the 50% of zygotes that are naturally unable to implant, an additional wastage of about 20% of all fertilized eggs occurs due to spontaneous abortions (miscarriages).
7. Abortifacient drugs have different chemical properties and actions from contraceptives. **Abortifacients**

> **terminate an established pregnancy**, while contraceptives prevent pregnancy by preventing fertilization.
>
> 8. xxx

Based on paragraph number 6 of the Medical Experts' Declaration, abortion is the termination of established pregnancy and that abortifacients, logically, terminate this pregnancy. Under paragraph number 5, pregnancy is established only ***after*** the implantation of the blastocysts or the fertilized egg. From this **medical viewpoint,** it is clear that prior to implantation, it is premature to talk about abortion and abortifacient as there is nothing yet to abort.

If the constitutional framers simply intended to adopt this medical viewpoint in crafting Section 12, Article II, there would have been no real need to insert the phrase "from conception." **This should be obvious to a discerning reader**. Since conception was equated with fertilization, as borne out by Records of the Constitutional Commission, **a fertilized egg or zygote, even without being implanted in the uterus, is therefore already entitled to constitutional protection from the State**.

e. The RH law's definition of abortifacient textually complies with Section 12, Article II, 1987 Constitution; Section 9 negates this conclusion.

In this regard, I find that despite the recognition of abortion only at a late stage from the *strict medical viewpoint,* the RH law's implied definition of abortion is broad enough to extend the prohibition against abortion to cover the fertilized egg or the zygote. Consistent with the constitutional protection of a fertilized egg or zygote, the RH Law defines an abortifacient as:

> any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA.

By considering a drug or device that prevents the fertilized ovum from reaching and implanting in the mother's womb as an abortifacient, the law protects the unborn at the earliest stage of its pre-natal development.

Thus, I agree with **the *ponencia* that the RH law's definition of abortifacient is constitutional**. The law, however, still leaves a nagging and contentious question relating to the provision of its Section 9, which reads:

> **SEC. 9. The Philippine National Drug Formulary System and Family Planning Supplies.** – The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, **non-abortifacient** and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, **any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it *is not to be used as an abortifacient***.
>
> These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: Provided, further, That the foregoing offices **shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose** and their other forms or equivalent. [emphases ours]

Section 9 includes hormonal contraceptives, intrauterine devices and injectables (collectively, *contraceptives*) among the family planning products and supplies in the National Drug Formulary, and makes them part of the products and supplies included in the regular purchase of all national hospitals. While the FDA still has to determine whether a particular contraceptive is abortive in nature, the underscored portion of ***paragraph 2 of Section 9 strongly indicates that abortifacients will be available for procurement and distribution by the government***. In short, the second paragraph of Section 9 itself confirms that the contraceptives to be distributed by the government are **abortifacient-capable** ***depending only on its "use."***[37]

That abortifacient-capable contraceptives will be procured and distributed by the government (necessarily using State funds) under Section 9 of the RH law is confirmed by the Implementing Rules and Regulations (IRR) of the RH law itself.

The IRR defines an *abortifacient* as "any drug or device that ***primarily*** induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the Food and Drug Administration." It also defines a *contraceptive* as "any safe, legal, effective, and scientifically proven modern family planning method, device, or health product, whether natural or artificial, that prevents pregnancy but does not ***primarily*** destroy a fertilized ovum or prevent a fertilized ovum from being implanted in the mother's womb.[38]

By these definitions, the RH law's IRR has added a qualification to the definition of an abortifacient that is not found in the law. Under the IRR of the RH law, a drug or device is an abortifacient only if its *primary* mechanism - as opposed to *secondary* mechanism, which the petitioners have strongly asserted - is abortive in nature. This added qualification to the definition of an abortifacient is a strong argument in favor of the petitioners that the contraceptives to be distributed by the state are abortifacient-capable.

Thus, in one breath, Section 9 of the RH law allows the inclusion of non-abortifacients only in the National Drug Formulary and in another breath allows the distribution of abortifacients based solely on the FDA certification that these abortifacents should not be used as such. To address this conflict, the *ponencia* submits that the FDA's certification in the last sentence of paragraph 1 of Section 9 should mean that the contraceptives to be made available "*cannot*" – instead of "is not" - be used as abortifacient, following the no-abortion principle under the Constitution.

To my mind, this inconsistency within the provision of Section 9, as reinforced by the RH law's IRR, should be addressed by construing it in relation with the entirety of the RH law.

One of the guiding principles under the RH law is the primacy given to effective and quality reproductive health care services to ensure maternal and child health.[39] Towards this end, the RH law allows properly trained and certified midwives and nurses to administer "lifesaving drugs such as, but not limited to, oxytocin and magnesium sulfate, in accordance with the guidelines set by the DOH, under emergency conditions and when there are no physicians available."[40] Similarly, the RH law included in the definition of Basic Emergency Obstetric and Newborn Care (BEMONC) the administration of certain drugs as part of lifesaving services for emergency maternal and newborn conditions/complications. These provisions are consistent with the State's commitment to reduce both maternal and infant mortality, and to ultimately save lives.[41]

The "life-saving" thrust of the law is complemented by the RH law's provisions that continues to prohibit abortion and prohibits the procurement and distribution of abortifacients. The RH law also limited the extent of the reproductive health rights it grants by excluding from its coverage abortion and access to abortifacients.[42] More specifically, it broadly defined abortifacients to include any drug or device that prevents the fertilized ovum from reaching and implanting in the womb. Thus, the RH law protects the fertilized ovum (zygote) consistent with Section 12, Article II of the 1987 Constitution.

Considering the "life-saving" thrust of the law, the procurement and distribution of abortifacients allowed under Section 9 should be interpreted with this "life-saving" thrust in mind. As an aid in understanding this approach, I quote respondent Senator Cayetano's explanation, cited by the public respondents:

> Allow me to explain. A careless phrase like "no drug known to be an abortifacient will be made available in the Philippines" sounds like a statement we could all support. But what most of us do not understand is the fact that many life-saving drugs are made available to an ailing mother to address her medical condition although there is a possibility that they may be harmful to a pregnant mother and her fetus. Thus, we have for instance, drugs for diseases of the heart, hypertension, seizures, ulcers and even acne, all of which are to be taken only under doctors' prescription and supervision precisely because of their harmful effects.
>
> **Making a blanket statement banning all medicines classified as abortifacients would put all these mothers and their children's lives in greater danger**. For decades, these mothers have relied on these medicines **to keep them alive**. I would like to give another example. A known abortifacient, misoprostol commonly known as cytotec, is one of the drugs that can save a mother's life. I am talking about a mother who just gave birth but has internal hemorrhage and in danger of bleeding to death. Her child has been born. Her child will live but she will die without this drug to stop her bleeding. Are we now to ban the use of this drug? Are we now to say that because it could possibly be used as an abortifacient, it could possibly be abused, this mother must now die despite giving birth to a healthy baby?
>
> Mr. President, we clearly need to make distinctions. These **life saving drugs** SHOULD NOT BE USED on any circumstances for purposes of carrying out an abortion. But under strict guidelines by the FDA, they can be used by a health practitioner to save a mother's life.

In short, the law allows the procurement of abortifacients under Section 9 ***only*** for the equally compelling interest of the State to save the life of the mother on account of a medical necessity.

f. The principle of double effect

In situations where the life of the unborn and the life of the mother collide with each other, the principle of double effect under Section 12, Article II must be applied. The Sponsorship Speech of Constitutional Commissioner Villegas discussed the principle of double effect, as follows:

> What if a doctor has to choose between the life of the child and the life of the mother? Will the doctor be guilty of murder if the life of the child is lost? The doctor is morally obliged always to try to save both lives. However, he can

act in favor of one when it is medically impossible to save both, provided that no direct harm is intended to the other. If the above principles are observed, the loss of the child's life is not intentional and, therefore, unavoidable. Hence, the doctor would not be guilty of abortion or murder.

I am sure Commissioner Nolledo can give the jurisprudence on this case, the application of the moral principle called the principle of double effect. In a medical operation performed on the mother, the indirect sacrifice of the child's life is not murder because there is no direct intention to kill the child. The direct intention is to operate on the mother and, therefore, there is no dilemma. And let me say that medical science has progressed so much that those situations are very few and far between. If we can produce babies in test tubes I can assure you that those so-called dilemma situations are very rare, and if they should occur there is a moral principle, the principle of double effect, that can be applied.

What would you say are the solutions to these hard cases? The most radical solution to these hard cases would be a caring and loving society that would provide services to support both the woman and the child physically and psychologically. This is the pro-life solution. The abortion solution, on the other hand, not only kills the fetus but also kills any care and love that society could have offered the aggrieved mother.

Implicit in all these arguments is the petition for the Constitution, the arguments against Section 9, requiring the State to equally protect the life of the mother and the life of the unborn from the moment of conception. These arguments want the Constitution to be open to the possibility of legalized abortion. The arguments have been put on record for the reference of future legislation and jurisprudence. xxx

I wholly agree with this position. Thus, to me, the general rule is that both the life of the unborn and the life of the mother should be protected. However, in case of exceptional conflict situations, the life of one may be preferred over the life of the other where it becomes medically necessary to do so. The principle of double effect recognizes that in some instances, the use or administration of certain drugs that are abortifacient-capable are necessary in order to save the life of the mother. The use in administration of these drugs in these instances is and should be allowed by Section 12, Article II of the Constitution since the policy is equal protection.

Justice Leonen argues in this regard that the principle of double effect is a Christian principle that may or may not be adopted by all of the medical community. He even claims that there are some who recommended its abandonment.

I submit that the religious roots of a principle adopted by the Constitution, is not a valid ground to ignore the principle altogether. While some parts of the Constitution were of foreign origin, some parts – including the entire text of Section 12, Article II – were uniquely Filipino, intended to be reflective of our own Filipino culture and tradition. I particularly refer to the primacy of life in our hierarchy of values. Not surprisingly, the public respondents do not dispute this principle of double effect and even allowed abortifacient to be used only for the purpose of equally safeguarding the life of the mother. The representatives of the people themselves recognized the primacy of life and the principle of double effect in Section 12, Article II when it gave a broad definition of an abortifacient to extend the protection to life to the fertilized ovum (zygote). These reasons effectively refute Justice Leone's positions.

k. The role of the DOH

As the lead agency in the implementation of the RH law, the Department of Health (*DOH*) is tasked to "[e]nsure people's access to medically safe, non-abortifacient, legal, quality and affordable reproductive health goods and services[.]"[43] This is consistent with the RH law's policy which "guarantees universal access [only] to medically-safe [and] non-abortifacient" contraceptives. The law also provides that these contraceptives "do not prevent the implantation of a fertilized ovum as determined by the" FDA. [44]

Accordingly, DOH is tasked to procure and distribute to local government units (*LGUs*) family planning supplies for the whole country and to monitor their usage.[45] Once delivered to the LGUs, the responsible health officials "shall assume responsibility for the supplies" and ensure their distribution in accordance with DOH guidelines.[46] For this purpose, a regional officer appointed by the DOH shall oversee the supply chain management of reproductive health supplies and/or health products in his or her respective area.[47] The RH law also authorizes LGUs to implement its own procurement, distribution and monitoring program "consistent with the overall provisions of this Act and the guidelines of the DOH."[48]

i. Guidelines

Under the RH law, the Food and Drug Administration (*FDA*) is tasked to determine whether a drug or device is abortifacient in nature. Once it determines that it is non-abortifacient, then the DOH may validly procure them.

However, if the FDA determines that the drug or device is abortifacient then ***as a rule***, the DOH may not validly procure, much less distribute, them. Consistent with the primacy of life under Section 12, Article II of the 1987 Constitution and the RH law's provisions prohibiting abortion and the distribution of abortifacients, the government cannot procure and distribute these abortifacients. By this, I refer to the definition of an abortifacient under the RH law, *i.e.*, without qualification on whether the

nature of its action (to induce abortion, or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb) is primary or secondary.

As a matter of ***exception***, the government should be able to procure and distribute abortifacients or drugs with abortifacient properties but solely **for the purpose of saving the life of the mother**. Specifically, the procurement and distribution of these abortifacients may be allowed only in emergency cases and should thus be made under medical supervision.[49] The IRR of the RH law defines an "emergency" as a condition or state of a patient wherein based on the objective findings of a prudent medical officer on duty for the day there is immediate danger and where delay in initial support and treatment may cause loss of life or cause permanent disability to the patient.[50]

In short, after the FDA's prior determination that the drug or device is abortifacient-capable,[51] the FDA will have to issue a certification that these drugs or devices are not to be used as abortifacients whether under the first or second paragraphs of Section 9. The DOH may (i) procure these contraceptives strictly following its (DOH) own guidelines that list the drugs or devices that are essentially used for life-saving purposes; if the drug certified by the FDA to be abortifacient is not essentially used for life saving purpose, then the DOH may not procure them; and (ii) distribute these based on DOH guidelines that limit its distribution strictly for life-saving, medically-supervised and, therefore, non-abortive purpose.

I note in this regard that under the **second paragraph of Section 9**, the procurement and distribution of emergency contraceptive pills, postcoital pills, abortifacients is subject to a similar condition that it "will not be used" for abortifacient purpose. This condition is also a recognition of the abortifacient-capable nature of "emergency contraceptive pills." Given this nature, their procurement and distribution must likewise involve emergency situation. However, the IRR's own definition of an "emergency contraceptive pills" does not contemplate an emergency situation that permits its procurement and distribution.

> l) *Emergency Contraceptive Pills*, also known as *Postcoital Pills* refers to methods of contraception that can be used to prevent pregnancy in the first few days after intercourse intended for emergency use following unprotected intercourse, contraceptive failure or misuse,x x x[52]

The "emergency" situation contemplated under the definition of an "emergency contraceptive pills" as quoted above is not the "emergency" situation under the principle of double effect in Section 12, Article II of the 1987 Constitution or the emergency as defined in the same IRR of the RH law. Should the FDA find, pursuant to its mandate under the RH law, that an emergency contraceptive pill or post-coital pill is abortifacient or is abortifacient-capable, then their distribution and procurement should follow the guideline under the exception.

If an abortifacient-capable drug essentially serves a purpose other than saving the life of the mother – and is, therefore, not included in the DOH guidelines that list what drugs or device are essentially used for life-saving purposes – then the general rule applies: ***the government may not procure and distribute it.***

Lastly, under Section 7.03 of the IRR of the RH law drugs, medicines, and health products for reproductive health services that are already included in the Essential Drug List as of the effectivity of the IRR shall remain in the EDL, pending ***FDA certification that these are not to be used as abortifacients.***

Since these are contraceptives that are already registered with the FDA[53] under RA No. 3720 as amended by RA No. 9711,[54] these contraceptives must undergo evaluation by the FDA under the provisions of the RH law to determine whether these are abortifacients - as defined by law and not by the IRR. In either case, the general rule and the exception I have laid down above should apply. On the one hand, if these products are non-abortifacients as defined under the RH law, then the government may procure and distribute them; on the other hand, if these products are abortifacients or are abortifacient-capable, the FDA may issue its certification under Section 7.03 of the IRR if the product is essentially used for life-saving purposes.

If the DOH determines that the product is essentially used for life-saving or emergency purposes, the DOH may (i) procure these contraceptives strictly following its (DOH) own guidelines that list the drugs or devices that are essentially used for life-saving purposes; and (ii) distribute these based on DOH guidelines that limit its distribution strictly for life-saving, medically-supervised and, therefore, non-abortive purpose. If the product is essentially for *other* therapeutic purpose, the FDA may not issue the certification under Section 7.03 of the IRR since the product may not be procured and distributed by the government in the first place.

B. Parental Rights

I also agree with the *ponencia* that an attack on Section 14 of the RH law is premature, but for my own reasons and qualifications.

Section 14 of the RH Law mandates the provision of "age-and-development-appropriate reproductive health education" in both the formal and non-formal education system in the country, and for its integration in relevant subjects in the curriculum, thus:

> SEC. 14. Age- and Development-Appropriate Reproductive Health Education. – The State shall provide age- and development-appropriate reproductive health education to adolescents which shall be taught by adequately trained teachers in formal and nonformal educational system and integrated in relevant subjects such as, but not limited to, values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood: Provided, That flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents-teachers-community associations, school officials and other interest groups. The Department of Education (DepED) shall formulate a curriculum which shall be used by public schools and may be adopted by private schools.

According to the petitioners, the mandatory RH education in schools deprives parents of their natural and primary right to raise their children according to their religious beliefs, and should thus be held unconstitutional.

The *ponencia*, while recognizing the primacy of parental rights under the 1987 Constitution, holds that it is premature to rule on the constitutionality of the mandatory RH education program, as the Department of Education has yet to formulate the curriculum implementing it. The Court is thus not in the position to speculate on its contents and determine whether they adhere to the Constitution.

I agree with the *ponencia's* observation that the lack of a curriculum renders the petitioners' allegations premature, and dispute Justice Reyes's position that the issue of Section 14's constitutionality is ripe for adjudication and that based on this, we can already rule with finality that Section 14 is constitutional.

We cannot, without first examining the actual contents of the curriculum and the religious beliefs and personal convictions of the parents that it could affect, declare that the mandatory RH education is consistent with the Constitution. In other words, we cannot declare that the mandatory RH education program does not violate parental rights when the curriculum that could possibly supplant it is not yet in existence. Given the primacy of the natural and fundamental rights of parents to raise their children, we should not pre-empt a constitutional challenge against its possible violation, especially since the scope and coercive nature of the RH mandatory education program could prevent the exercise of these rights.

Further, I am uneasy to join the *ponencia's* conclusion that, at any rate, Section 14 is constitutional. I express misgivings on the constitutionality of this provision, which does not on its face provide for an opt-out clause for parents whose religious beliefs conflict with the State's program.

a. Parental rights in the Filipino context

The 1987 Constitution introduced an entire section on the Family that, in essence, recognizes the Filipino family as the foundation of the nation and mandates the State to strengthen its solidarity and actively promote its total development.

Corollary to the importance that the Constitution gives the Filipino family is the State's mandate to protect and strengthen it. It is not by coincidence that the Constitution, in requiring the State to protect and strengthen the Filipino family, describes it as a **basic** and **autonomous** social institution.

This is a recognition of and deference to the decisional privacy inherent in every family, a recognition that is reflected and reinforced in other provisions of the Constitution: Article II, Section 12 recognizes the "natural and primary right and duty of parents" in rearing the youth; Article XV, Section 3 mandates the State to defend the "right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood" and "the right of families or family associations to participate in the planning and implementation of policies and programs that affect them."

These constitutional provisions reflect the Filipino ideals and aspirations which the Constitution requires the government to promote and strengthen. Historically, these provisions show "a strong tradition of parental concern for the nurture and upbringing of their children"[55] that makes us, as a people, stand out from the rest of world's cultures and traditions. We stand out for the way we, as a family, care for our young and for the aged. To us, family ties extend from ***before the cradle and beyond the grave***. I do hope this remains a tradition and can stand *the tests of time and governmental intervention.*

The relationship created by and resulting from a family naturally extends to and involves other personal decisions that relate to child rearing and education. Parents have the natural right, as well as the moral and legal duty, to care for their children, see to their proper upbringing and safeguard their best interest and welfare.[56] These array of personal decisions are protected by the constitutional right to privacy ***to be free from*** **unwarranted governmental intrusion.** Pursuant to this natural right and duty of parents over the person of their minor children, parental authority and responsibility include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.[57]

b. Parental rights and the state's interest in the youth

The Constitution provides that the family's autonomy is not without limits since the State similarly has a role and interest in protecting children rights and advancing their welfare.

While parents are given a wide latitude of discretion and support in rearing their children, their well-being is of course a subject within the State's constitutional power to regulate.[58] Specifically, the Constitution tasked the State to promote and protect their moral, spiritual, intellectual and social development, and to recognize and support their vital role in nation-building.[59] In this undertaking, the State acts in its capacity as *parens patriae*.

Concededly, the State – as *parens patriae* – has the right and duty to minimize the risk of harm, arising from the acquisition of knowledge from polluted sources, to those who are as yet unable to take care of themselves fully.

In other words, the family itself and the rights of parenthood are not completely beyond regulation; parental freedom and authority in things affecting the child's welfare, including, to some extent, matters of conscience and religious conviction are not totally beyond State authority.[60] It is in this area that the parents' right to raise their children and the State's interest in rearing the youth clash.

In our jurisdiction, the case of *Ebralinag v. the Division Superintendent of Schools of Cebu*[61] presents the Court's resolution of the conflict between the parents' right to raise their children according to their religious beliefs, and the State's interest in inculcating civic consciousness among the youth and teaching them the duties of citizenship.

In *Ebralinag*, we annulled the expulsion orders issued by the respondent schools against students who refused to attend the flag ceremony on the ground that it violates their religious convictions. We said that while the State has the right and responsibility to teach the youth the values of patriotism and nationalism, this interest is subject to a "balancing process" when it intrudes into other fundamental rights such as those specifically protected by the Free Exercise Clause, the constitutional right to education and the unassailable interest of parents to guide the religious upbringing of their children in accordance with the dictates of their conscience and their sincere religious beliefs.[62]

While we conducted a 'balancing process' in *Ebralinag*, we have yet to formally enunciate a doctrinal test regarding its operation. In the context of the present case, we might ask when does a State program unlawfully intrude upon the parents' right to raise their children according to their own religious convictions? Stated differently, how far can the State go in interfering with this right based on the State's "demands" for responsible parenthood?

Case law from the U.S., from where our Bill of Rights originated, has developed a body of jurisprudence regarding the resolution of clashes between parental rights and the State's *parens patriae* interests.

A survey of US jurisprudence shows that the custody, care and nurture of the child, including his preparation for civic obligations, reside first in the parents, and these functions and freedoms are accorded recognition and respect by the State. In the words of *Pierce v. Society Sisters*:[63]

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Thus, in *Meyer v. Nebraska*,[64] *Pierce v. Society of Sisters*[65] and *Wisconsin v. Yoder*,[66] the US Supreme Court struck down as unconstitutional various laws regarding the education of children in public schools. In these cases, the parents were compelled to follow state directives under pain of sanction; all of the assailed statutes had penal clauses for noncompliant parents and guardians. The State unlawfully intruded into the parents' natural right to raise their children because they were coerced into following a mandatory governmental action, without any opting out or excusal system provided for objecting parents.[67]

Indeed, several state courts in the US have upheld the validity of state-directed sex education programs because it gives parents the option to excuse their children from attending it.[68] The Supreme Court of Hawaii[69] and the Court of Appeals of California,[70] for instance, have upheld similarly phrased laws mandating sex education in public schools. They both noted that the sex education program in their states allows the parents to first review the program's contents, and excuse their children's attendance should they find the program objectionable. The Michigan Court of Appeals[71] also upheld the validity of its State's sex education program, as it was completely voluntary and requires parental authorization. The Michigan law also permits parents to excuse their children from attending the sex education program, and categorically provides that unwilling parents would not be punished for opting out of the program.[72]

In these lights, **a mandatory reproductive health education program in public schools does not violate parental privacy if they allow parents to review and excuse their children from attending the program, or if the State shows a compelling state interest to override the parents' choice and compel them to allow their children to attend the program.**

c. The State has failed to show

any compelling state interest to override parental rights in reproductive health education

I disagree with Justice Reyes's assertion that the mandatory reproductive health education program has already passed the compelling state interest test used to determine whether a governmental program may override familial privacy and the parents' rights to raise their children in accordance with their beliefs.

I submit that, for now, the government has not provided any sufficiently compelling state interest to override parental rights; neither has it proven that the mandatory RH education program has been narrowed down to the least intrusive means to achieve it.

I likewise disagree with Justice Reyes's argument that the rise of teenage pregnancies in the recent years, coupled with our ballooning population, is a compelling state interest – it is, at most a reasonable state interest, but not one compelling enough to override parental rights.

What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the State for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern.[73] It essentially involves a public right or interest that, because of its primacy, overrides individual rights, and allows the former to take precedence over the latter.

The prevalence of teenage pregnancies, at most, constitutes a matter of public concern. That its impact to society and to the teenage mother is important cannot be denied, but that it is important enough to defeat privacy rights is another matter.

I take exception to the comparison between societal problems such as alcohol and drugs abuse with teenage pregnancies. Indeed, alcohol and drugs are societal evils that beget even more evils, such as increases in crime rates and familial discord. The same cannot be said of teenage pregnancies. I do not believe that begetting a child at a young age would have a direct correlation to crimes and the breaking up of families.

Neither can I agree that the consultations with parents and teachers associations prior to the curriculum's formulation make the mandatory RH education as the least intrusive means to address increases in teenage pregnancies. Consultations are informative, at least, and deliberative and suggestive, at most; they cannot, with certainty, immediately guarantee that parents' familial privacy rights would be respected.

Notable, too, is the all-encompassing penal clause that penalizes any violation of the RH Law. On its face, this penal clause, together with the wide scope of the mandatory RH education program, actually makes the program coercive for parents. It could be read as a compulsion on parents, under pain of fine and imprisonment, to allow their children to attend the RH education program. Even assuming that the penal clause will not apply to refusing parents, the scope of the RH education program gives them very little choice.

To my mind, the Solicitor's argument that the RH education program allows parents to exercise their preferences because they can choose to send their children to private schools is not sufficiently persuasive as it ignores the environment on which the Philippine education system operates. This choice is superficial for many families, as most of them rely on public schools for the education of their children.[74] For most parents, sending their children to private schools is a luxury that only a few can afford.

d. The question of Section 14's constitutional prematurity

I do admit that some of the topics enumerated in the RH education program are, on their face, not objectionable, and are within the State's authority to include in the curriculum of public school education. But at this point, without the specifics of what would be taught under the RH education program, we cannot determine how it would exactly affect parental rights and the right of parents to raise their children according to their religious beliefs.

Too, we cannot determine whether the Department of Education will or will not provide parents the right to review the contents of the curriculum and opt to excuse their children from attending these subjects. This option allows the implementation of the RH education program while respecting parental rights, and saves it from questions of constitutionality.

In these lights, I agree with Justice Mendoza's conclusion that the challenge to the constitutionality of Section 14 of the RH Law is premature.

C. Disturbing observation and concerns: The effects on contraceptives on the national, social, cultural and religious values

As I earlier mentioned, the implementation of the RH law cannot but leave lasting imprints on Philippine society, some of them positive and some negative. I do not here question the wisdom of the law, as matters of wisdom and policy are outside judicial realm. I claim judicial license in this regard if I intrude into prohibited territory in the course of expressing disturbing concerns that come to mind.

The Philippines to be sure, is not the first country to use contraceptives and the mixed results from countries that have long travelled this road are, to my mind, not very encouraging. One obvious discouraging effect of controlled population growth is on the economy of some of these countries which now have to secure foreign labor to balance their finances. This development has been a boon for a country like the Philippines with a fast growing population; we are enjoying now the benefits of our fast-growing population through the returns our migrating Filipino workers bring back to the Philippines from their work in labor-starved countries. This has become possible because host countries like Japan and the more economically advanced European countries need workers to man their industries and supply their economies. Another economic effect is on retirement systems that have been burdened by predominantly aging populations. For this same reason, some countries even face impending economic slowdown in the middle term[75] unless they can effectively remedy their manpower shortage.

But more than the political and economic consequences, I believe that the RH Law's implementation could usher in societal and individual behaviors and norms vastly different from the traditional. Already, some of our traditions are giving way, brought about alone by advances in computerization and communication. Factoring in contraceptives and birth control may immeasurably hasten the changes for the worse.

In the family front alone, the ideals expressed in our Constitution about the Filipino family may soon just be unreachable ideals that we can only long for. Access to modern methods of family planning, unless closely regulated, can shape individual preferences and behavior, that, when aggregated, could lead to entirely different societal perception on sex, marriage, family and parenthood.[76]

The effect of the RH law on parents' capacity to influence children about reproductive health could, in a couple of years, produce a generation with very different moral views and beliefs from the parents and the adults of this generation, resulting in a possible schism between the younger and elder members of the family. Their polarized views could lead to the deterioration of the strong ties that bind the Filipino family.

Contraceptives and birth control devices, distributed even among the young because of lack of stringent control, can lead to a generation of young Filipinos uncaring about the morality of instant sex and irresponsible in their view about pregnancies and the diseases that sexual promiscuity can bring. Even in the near term, this development can affect views about marriage and the rearing of the young.

For those already married, contraceptives and birth control devices of course offer greater opportunities for sex outside of marriage, both for the husband and the wife. The effects of these outside opportunities on marriage may already be with us. Perhaps, more than at any other time, we have a record number now of separated couples and wrecked marriages, to the prejudice of the family and the children caught in between.

In hindsight, the 1987 Constitution's painstaking efforts to include provisions on the family, parenthood and marriage reflect our cultural identity as a Filipino people.[77] I do not believe it to be disputable that the heart of the Filipino society is the family. Congress, in introducing innovations to reproductive health might have tried to respect this ideal but I have serious doubts and misgivings on whether we can succeed given the deterioration and erosion in familial values already becoming evident in our society. I hope that in this instance, history would prove me wrong.

D. Freedom of Expression of Health Practitioners and the RH Law

I submit that Section 23 (a)(1) of the RH law, which penalizes healthcare providers who "knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health" is an unconstitutional subsequent punishment of speech.

Broken down to its elements, Section 23(a)(1)[78] of the RH law penalizes health care providers who (1) knowingly withhold information about programs and services on reproductive health; (2) knowingly restrict the dissemination of these programs and services; or (3) intentionally provide incorrect information regarding them.

These prohibited acts are, by themselves, communicative and expressive, and thus constitute speech. Intentionally providing incorrect information cannot be performed without uttering, verbally or otherwise, the information that the RH Law deems to be incorrect. The information that is illegal to withhold or restrict under Section 23 also constitutes speech, as it is an expression of data and opinions regarding reproductive health services and programs; thus, the prerogative to not utter these pieces of information also constitutes speech.[79]

By penalizing these expressive acts, Section 23 imposes a subsequent punishment on speech, which as a counterpart to the prohibition against prior restraint, is also generally prohibited under the constitutional guarantee of freedom of expression. Without an assurance that speech would not be subsequently penalized, people would hesitate to speak for fear of its consequences; there would be no need for prior restraints because the punishment itself would effectively serve as a chilling effect on speech.[80]

While I am aware of the state's interest in regulating the practice of medicine and other health professions, including the communications made in the course of this practice, I believe that Section 23(a)(1) of the RH Law has overreached the permissible coverage of regulation on the speech of doctors and other health professionals.

Jurisprudence in the United States regarding the speech of medical practitioners has drawn a distinction between speech in the course of their practice of medicine, and speech in public.[81] When a doctor speaks to his patient, his speech may be subjected to reasonable regulation by the state to ensure the accuracy of the information he gives his patient and the quality of healthcare he provides.[82] But when the doctor speaks to the public, his speech becomes protected speech, and the guarantees against prior restraint and subsequent punishment applies to his expressions that involves medicine or any other topic.[83] This distinction is not provided in Section 23(a)(1) of the RH Law, and we cannot create a distinction in the law when it provides none. Thus, ***I submit that Section 23(a)(1) violates the right of health practitioners to speak in public about reproductive health and should simply be struck down.***

In particular, Section 23 (a)(1) of the RH Law fails to pass the balancing of interests test designed to determine the validity of subsequent punishments that do not involve the state's interests in national security crimes. Under this test, the Court is tasked to determine which of the competing legitimate interests that the law pits against each other demands the greater protection under particular circumstances.[84]

In the present case, Section 23(a)(1) of the RH law pits against each other the State's interest in promoting the health and welfare of women on the one hand, and the freedom of expression of health practitioners, on the other. The Solicitor General, in particular, emphasized the need for Section 23(a)(1) to fulfill the State's goal to secure the people's access to full, unbiased and accurate information about reproductive health services.

While I do not wish to underestimate the State's interest in providing accurate information on reproductive health, I believe that the freedom of expression of medical health practitioners, particularly in their communications to the public, outweighs this State interest for the following reasons:

First, we must consider that the RH Law already puts the entire State machinery in providing an all-encompassing, comprehensive, and nationwide information dissemination program on family planning and other reproductive health programs and services. The RH law commands the State to have an official stand on reproductive health care and the full-range of family planning methods it supports, from natural to artificial contraceptives. It then requires the national government to take the lead in the implementation of the information dissemination campaign,[85] and local government units to toe the line that the national government draws.[86]

The RH Law even requires both public and private hospitals to provide a full-range of modern family planning services, including both natural and artificial means. This necessarily means that hospitals (where the health practitioners work) are required by law and under pain of penal punishment, to disseminate information about all available reproductive health services.

To my mind, this information dissemination program, along with the mandatory requirement for hospitals to provide a full range of family planning services, sufficiently cover the state's interest in providing accurate information about available reproductive health services and programs. If, corollary to the State's interest to promote accurate information about reproductive health, it intended to make health care practitioners accountable for any negligence they may commit in the course of their practice, I submit that, as my second argument will further expound, the existing regulatory framework for their practice already sufficiently protects against such negligence and malpractice.

Second, the existing regulatory framework for the practice of medicine sufficiently penalizes negligence and malpractice, to which the provision of inaccurate information or the withholding of relevant medical information belongs.

Under our laws, an erring health practitioner may be subjected to three separate proceedings. Depending on the act he or she has committed, the health practitioner may be held criminally and civilly liable by our courts,[87] and administratively liable by their professional regulation board.[88] For government employees, they can also be held administratively liable under civil service laws.[89]

Thus, I do not see any reason to add another penalty specific to speech that covers reproductive health, especially since, as pointed out earlier, state interests in providing accurate information about RH services are already fully covered.

Lastly, and what, to me, tips the balance overwhelmingly in favor of speech, the chilling effect that Section 23 (a)(1) creates against the expression of possible ideas, discussions and opinions could eventually hinder progress in the science and research on reproductive health. Health professionals are the most qualified to debate about the efficacy and side effects of reproductive health services, and the penalty against uttering incorrect information about reproductive health services could silence them. Even worse, the requirement for them to provide information on all reproductive health programs of the government could add to the chilling effect, as it sends a signal that the only information on reproductive health that should be considered as correct is that of the government.

In these lights, I concur with the *ponencia's* conclusions, subject to the points I raised in this Separate Opinion.

---

[1] Section 2, Article VIII of the 1987 Constitution reads:

Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

[2] Section 6, Article VIII of the 1987 Constitution reads:

Section 6 provides that "The Supreme Court shall have administrative supervision over all courts and the personnel thereof."

[3] Batas Pambansa Blg. 129.

[4] This same power was only implied in the US Constitution and was expressly recognized only through jurisprudence (*Marbury v. Madison*, 5 US 137 [1803]). Our 1935 and the 1973 Constitutions followed this approach.

[5] Constitution, Article VIII, Section 1.

[6] *Pimentel v. Aguirre*, G.R. No. 132988, July 19, 2000; and *Tanada v. Angara*, G.R. No. 118295 May 2, 1997.

[7] Through the writs of certiorari, prohibition and mandamus over lower courts and quasi-judicial bodies in the exercise of their adjudicative functions.

[8] As petitioner Alliance for Family Foundation Inc, states, "the question of when life begins is neither metaphysical nor theological – it is scientific;" (Memorandum, pp. 48) and unless the scientific community has become unanimous on a question that transcends every culture, race, and religion, this Court cannot consider itself adequate to answer the question. Indeed, the question of "when life begins?" is not simply a question of law that this Court can conclusively answer; it is not also simply a question of policy that Congress can conclusively determine. What the Court does know is that it is question that is as old as humanity itself.

[9] http://psychology.about.com/od/developmentalpsychology/a/prenataldevelop.htm.

[10] Article 83 of the Revised Penal Code.

[11] See also Presidential Decree (PD) No. 603. The effect of this grant of presumptive personality is illustrated in *Geluz v. Velez* (G.R. No. L-16439, July 20, 1961) where the Court, denied recovery of damages for the death of an unborn because it is not yet "endowed with personality." Nevertheless, the Court recognized that an unborn fetus has a "**right to life and physical integrity**." Similarly in *Quimiging v. Icao* (G.R. No. 26795, July 31, 1970), the Court ruled an unborn child is entitled to receive support from its progenitors.

[12] See Arts. 255-259 of the Revised Penal Code.

[13] The Preamble of the 1987 Constitution reads:

> We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

[14] This conclusion is reached by a reading of Section 12, Article II in relation with the other provisions in the 1987 Constitution. Unlike the US Constitution, the idea of respect for life and for human dignity permeates the Philippine Constitution, viz: Section 5, Article II on the protection of life under a democracy; Section 9, Article II on a social order that ensures quality life for all; Article II in relation to Article XIII on its special regard for the youth, women, health, and ecology as factors affecting the life of the people; Section 1, Article III on the protection of life through the observance of due process; Section 1, Article XII on national economy that fosters equality of life for all.

[15] Records of the Constitutional Commission (RCC), July 17, 1986, p. 56.

[16] A heated and prolonged debated ensued on the question of whether a provision protecting the life of the unborn should ever be written in the Constitution.

[17] There are three basic stage of prenatal development: germinal stage, embryonic stage and fetal stage (http://psychology.about.com/od/developmentalpsychology/a/prenataldevelop.htm.) last accessed March 20, 2014.

[18] The process of growth and development within the womb in which a zygote (the cell formed by the combination of a sperm and an egg) becomes an embryo, a fetus, and then a baby (http://www.medterms.com/script/main/art.asp?articlekey=11899).

[19] (http://psychology.about.com/od/developmentalpsychology/a/prenataldevelop.htm.) last accessed March 20, 2014.

[20] RCC, July 17, 1986.

[21] While the US Supreme Court recently reversed the trend of reviewing congressional findings of fact in *Gonzales v. Carhart* (550 US 124 [2007]) it formally disavowed judicial deference on the US Congress's findings:

> Although we review congressional fact finding under a deferential standard, we do not in the circumstances here place dispositive weight on Congress' findings. The Court retains an independent constitutional duty to review factual findings where constitutional rights are at stake. See *Crowell v. Benson*, 285 U. S. 22, 60 (1932) ("In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function")

[22] See *Gonzales v. Carhart,* 550 U.S. 124, (2007); *Kansas v. Hendricks*, 521 US 346 (1997); *Jones v. United States*, 463 U.S. 354 (1983).

In *Gonzales v. Carhart,* the Court was confronted with a medical disagreement whether the law's prohibition on a particular abortion procedure would ever impose significant health risks on women seeking abortion. The Court upheld the prohibition as being consistent with the State's interest in promoting respect for human life at all stages in the pregnancy. "The medical uncertainty provides a sufficient basis to conclude in this facial attack that the Act does not impose an undue burden." In *US v. Marshall,* 414 U.S. 417 (1974), which the public respondents cited, after Robert Edward Marshall pleaded guilty to an indictment charging him with entering a bank with intent to commit a felony, he requested that he be considered for treatment as a narcotic addict pursuant to law. The court denied his request because his prior two felony convictions statutorily excluded him from the discretionary commitment provision of the law. Marshall questioned the denial on due process grounds. The Court denied the challenge. After considering the limited resources to fund the program and the lack of "generally accepted medical view as to the efficacy of presently known therapeutic methods of treating addicts," the Court said that Congress simply made "a policy choice in an experimental program" that it deems more beneficial to the society.

[23] Section 3(c); Section 4 (c), (d), (q)2; and Section 5, Republic Act (RA) No. 10354.

[24] Under Section 17 a(1) and (3) of RA No. 9710 (An Act Providing for the Magna Carta of Women), women are granted, among others, access to maternal care which includes access to pre-natal and post-natal services to address pregnancy and infant health and nutrition and legal, safe and effective methods of family planning. Under Section 3(f) of RA No. 6972 (An Act Establishing a Daycare Center in Every Barangay, Instituting therein a Total Development and Protection of Children Program, Appropriating Funds therefor, and For Other Purposes) the total development and protection of children program at the barangay level include a referral and support system for pregnant mothers for prenatal and neonatal care. Under Section 3(a) of RA No. 8980 (An Act Promulgating a Comprehensive Policy and a National System for Early Childhood Care and Development Providing Funds therefor and For Other Purposes), the early childhood and development system under the law aims to make adequate health and nutrition programs accessible to mothers as early as the pre-natal period.

[25] On this third reason, the US Supreme Court added:

Some of the argument for this justification rests on the theory that a new human life is present from the moment of conception. The State's interest and general obligation to protect life then extends, it is argued, to prenatal life. Only when the life of the pregnant mother herself is at stake, balanced against the life she carries within her, should the interest of the embryo or fetus not prevail. Logically, of course, a legitimate state interest in this area need not stand or fall on acceptance of the belief that life begins at conception or at some other point prior to live birth. In assessing the State's interest, recognition may be given to the less rigid claim that as long as at least potential life is involved, the State may assert interests beyond the protection of the pregnant woman alone.

[26] Roe challenged the constitutionality of a Texas criminal abortion law that proscribes procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life.

[27] 381 US 479 (1965). The Court reversed the conviction of the appellants who prescribed contraceptives to married couples.

[28] 405 US 438 (1971).

[29] The US Supreme Court said that "if the right of privacy means anything, it is the right of the *individual,* married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear

or beget a child."

[30] The following is Roe's trimester framework.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

[31] The cases (e.g., *Griswold v. Connecticut*, 381 U.S. 479 [1965] and *Eisenstadt v. Baird,* 405 U.S. 438 [1971]) that set the stage for *Roe v. Wade* essentially reflect what the American constitutional law thinking is on the matter of pregnancy, abortion, and the State's intervention. The apprehension of the Framers of the constitution that this individualist American ideal of privacy to justify abortion might find their way in our statute books and jurisprudence must be understood in light of this apprehension. What is distinctly noticeable in these American cases that set it apart from the case before us is the reversal of roles between the exercise of governmental power and the assertion of fundamental rights. These American cases basically involved the government's assertion of its interest over potential life as opposed to a woman's privacy and liberty interest to terminate that potential life. In the case before us, it is the government which is accused of threatening a potential life through the RH law.

[32] R.C.C., September 16, 1986.

[33] 431 U.S. 678 (1977). The Court struck down a New York law criminalizing the sale, distribution (except by a licensed pharmacist to a person sixteen years of age or over) and advertisement of nonprescription contraceptives because the limitation on the distribution imposed a significant burden on the right of the individuals to use contraceptives if they choose to do so. The Court ruled that since a decision on whether to bear or beget a child involves a fundamental right, regulations imposing a burden on it may be justified only by compelling state interests, and must be narrowly drawn to express only those interests - something which is absent in this case. The Court said:

> The Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the State. Restrictions on the distribution of contraceptives clearly burden the freedom to make such decisions.

[34] Except by a licensed pharmacist and only to a person sixteen years of age or over.

[35] 505 US 833 (1992).

[36] In this case, the constitutionality of a Pennsylvania statute which imposes certain requirements before and after an abortion was challenged. The US Supreme Court abandoned the trimester framework in Roe by replacing it with the "undue burden" standard - *i.e.*, maintaining the right of the pregnant woman to terminate her pregnancy subject to state regulations that does not amount to an "undue burden" for the exercise of the right. Nonetheless, the Court emphasized that it affirms Roe's "central holding" which consists of three parts: first, a recognition of the right of the woman to choose to have an abortion before viability without undue interference from the State; second, a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger the woman's life or health; third, the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.

[37] Petitioner ALFI correctly pointed out that under the Implementing Rules and Regulations (IRR) of RA No. 10354 (Section 3.01a and 7.04a), a drug or device will be considered an abortifacient only if it "primarily" induces the abortion, destruction of fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the uterus (Memorandum, p. 168).

[38] Section 7.04 of the IRR also reads:

> **Section 7.04**. *FDA Certification of Family Planning Supplies.* The FDA must certify that a family planning drug or device is not an abortifacient in dosages of its approved indication (for drugs) or intended use (for devices) prior to its inclusion in the EDL. The FDA shall observe the following guidelines in the determination of whether or not a drug or device is an abortifacient:
>
> a) As defined in Section 3.01 (a) of these Rules, a drug or device is deemed to be an abortifacient if it is proven to primarily induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb;

xxx

[39] Section 2(c), RA No. 10354.

[40] Section 5, RA No. 10354.

[41] Public Respondents' Comment, pp. 4-5.

[42] Section 4(s), RA No. 10354.

[43] Section 19, RA No. 10354.

[44] Section 2, RA No. 10354; See also Section 3, RA No. 10354.

[45] Section 10, RA No. 10354.

[46] Section 8.08, IRR of RA No. 10354.

[47] Section 8.08, IRR of RA No. 10354.

[48] Section 10, RA No. 10354; Section 8.09 and Section 12.02k, IRR of RA No. 10354. To ensure the effective implementation of RA No. 10354, [See Section 3(i)], the DOH is required to "facilitate the involvement and participation of [non-government organization] and the private sector... in the production, distribution and delivery of quality reproductive health and family planning supplies and commodities [See Section 19b(2), RA No. 10354; Section 12.01k and Section 12.04 of the IRR of RA No. 10354]. Towards this end, the IRR of RA No. 10354 provides that "where practicable, the DOH or LGUs may engage [the services of] civil society organizations or private sector distributors [Section 8.08 of the IRR of RA No. 10354].

[49] See Section 5 of RA No. 10354. Section 4.11 to 4.13 of the IRR of RA No. 10354 reads:

> **Section 4.11** *Provision of Life-Saving Drugs During Maternal Care Emergencies*. Midwives and nurses shall be allowed to administer life-saving drugs, such as but not limited to oxytocin and magnesium sulfate, in accordance with the guidelines set by the DOH, under emergency conditions and when there are no physicians available: Provided, That they are properly trained and certified to administer these life-saving drugs.
>
> **Section 4.12** *Policies on Administration of Life-Saving Drugs.* Properly trained and certified midwives and nurses shall be allowed to administer intravenous fluids, oxytocin, magnesium sulfate, or other life-saving drugs in emergency situations and when there are no physicians available. The certification shall be issued by DOH-recognized training centers upon satisfactory completion of a training course. The curriculum for this training course shall be developed by the DOH in consultation with the relevant societies of skilled health professionals.
>
> Within sixty (60) days from effectivity of these Rules, the DOH shall develop guidelines for the implementation of this provision. The guidelines shall include provisions for immediate referral and transport of the patient upon administration of these life-saving drugs.
>
> **Section 4.13** *Certification for LGU-Based Midwives and Nurses for the Administration of Life-Saving Drugs*. The LGUs, in coordination with the DOH, shall endeavor that all midwives and nurses assigned to public primary health care facilities such as Rural Health Units (RHUs) be given training and certification by a DOH-recognized training center to administer life-saving drugs within one (1) year from the effectivity of these Rules.

[50] Section 3.01k of the IRR of RA No. 10354.

[51] See Section 2, Section 3(e), and Section 4(a) of RA No. 10354.

[52] Section 3.01(l) of the IRR of RA No. 10354.

[53] Section 3(l) of RA No. 10354 reads: "

> (l) Modern methods of family planning refers to safe, effective, non-abortifacient and legal methods, whether natural or artificial, that are registered with the FDA, to plan pregnancy.

[54] An Act Strengthening and Rationalizing the Regulatory Capacity of the Bureau of Food and Drugs by Establishing Adequate Testing Laboratories and Field Offices, Upgrading its Equipment, Augmenting its Human Resource Complement, Giving

Authority to Retain its Income, Renaming the Food and Drug Administration, Amending Certain Sections of Republic Act No. 3720, as amended, and Appropriating Funds therefor.

[55] *Wisconsin v. Yoder*, 406 US 205.

[56] *Silva v. CA,* G.R. No. 114742, July 17, 1997.

[57] Art. 209, Executive Order No. 209.

[58] *Ginsberg v. New York*, 390 U.S. 629 (1968).

[59] Article II, Section 13 of the 1987 Constitution reads:

> Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

[60] *Prince v. Massachusetts,* 321 US 158 (1944), citing *Reynolds v. United States*, 98 US 145; *Davis v. Beason,* 133 US 333.

[61] G.R. No. 95770, December 29, 1995.

[62] G.R. No. 95770, December 29, 1995.

[63] 268 US 510 (1925).

[64] 262 U.S. 390 (1923).

[65] 268 U.S. 510 (1925).

[66] 406 U.S. 205 (1972).

[67] See *Curtis v. School Comm*., 420 Mass. 749 (1995).

[68] See The Courts and Education, Volume 77, Part 1, Edited by Clifford P. Hooker, University of Chicago Press, 1978, pp. 157-158.

[69] *Medeiros v. Kiyosaki*, 478 P. 2d 314 (1970).

[70] *Citizens for Parental Rights v. San Mateo County Bd. of Education,* 51 Cal. App. 3d 1 (1976).

[71] *Hobolth v. Greenway*, 52 Mich. App. 682 (1974).

[72] *Hobolth v. Greenway,* 52 Mich. App. 682, 684 (1974).

[73] *Serrano v. Gallant Maritime Services,* G.R. No. 167614, March 24, 2009.

[74] As of the year 2000, only 7.76% of the total elementary school students and 22.67% of the total high school students are enrolled in private institutions. Andrabi, *et. al.,* Private Schooling: Limits and Possibilities, October 2005, accessed from http://www.hks.harvard.edu/fs/akhwaja/papers/PrivateSchoold_Final_Nov5.pdf, citing Edstats, The World Bank, Washington, D.C.

[75] *See Peter G. Peterson,* Gray Dawn: The Global Aging Crisis, Foreign Affairs, Vol. 78, No. 1 (Jan. - Feb., 1999), available at http://www.jstor.org; European Union Center of North Carolina, EU Briefings: The EU's Demographic Crisis, March 2008, at http://europe.unc.edu/wp-content/uploads/2013/08/Brief9-0803-demographic-crisis.pdf.

[76] Prolife petition, pp. 34-37.

[77] *See, for instance,* Article II, Section 12 and Article XV of the 1987 Constitution.

[78] Section 23 of RA 10354 reads:

> SEC. 23. Prohibited Acts. – The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

(1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;

[79] The right to speak includes the right not to speak, J. Cruz, Separate Opinion in *Ebralinag v. Division Schools Superintendent of Cebu,* G.R. No. 95770, March 1, 1993.

[80] See Todd F. Simon, First Amendment in the Twentieth Century U.S. Supreme Court begins to define freedoms of speech and press, in HISTORY OF MASS MEDIA IN THE UNITED STATES: AN ENCYCLOPEDIA (1999), p.223; N*ew York Times Co. v. Sullivan,* 376 U.S. 254 (1964).

[81] See Robert C. Post, Informed Consent to Abortion: A First Amendment Analysis of Compelled Physician Speech, 3 Univ. of Illinois Law Rev. 939, 2007, available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1169&context=fss_papers

[82] The practice of medicine, like all human behavior, transpires through the medium of speech, In regulating the practice, therefore, the state must necessarily also regulate professional speech, Without so much as a nod to the First Amendment, doctors are routinely held liable for malpractice for speaking, or for failing to speak. Doctors commit malpractice for failing to inform patients in a timely way of an accurate diagnosis, for failing to give patients proper instructions, for failing to ask patients necessary questions, or for failing to refer a patient to an appropriate specialist. In all these contexts the regulation of professional speech is theoretically and practically inseparable from the regulation of medicine. Id. at 950 – 951.

[83] *See Bailey v. Huggins Diagnostic & Rehabilitation Center,* 952 P.2d 768 (Colo. Ct, App 1997), where the Colorado Supreme Court made a distinction between a dentists' speech made in the course of a dental treatment, and his speech in books and opinion articles; the former may be the subject of a malpractice suit; the latter, on the other hand, is not.

[84] *American Communications Assoc. v. Douds*, 339 US 282, as cited in *Gonzales v. COMELEC.*

[85] It mandates the Department of Health and local government units to "initiate and sustain a heightened nationwide multimedia-campaign to raise the level of public awareness" on reproductive health, including family planning, and mandates local governments in highly-urbanized cities to operate mobile health care services, which shall, aside from providing health care goods and services, disseminate knowledge and information on reproductive health.

Aside from capacity-building, the DOH is also required to update local government units with appropriate information and resources to keep the latter updated on current studies and researches relating to family planning. These pieces of information shall, presumably, include information issued by the Food and Drugs Administration regarding the use of and safety of contraceptives.

[86] Further, the RH Law mandates the DOH to disseminate information and train local governments as regards its reproductive health care programs, and provide them with the necessary supplies and equipment. Local government units, in turn, are mandated to train their respective barangay health workers and other barangay volunteers on the promotion of reproductive health.

[87] In this jurisdiction, however, such claims are most often brought as a civil action for damages under Article 2176 of the Civil Code, and in some instances, as a criminal case under Article 365 of the Revised Penal Code, *Cruz v. Court of Appeals*, G.R. No. 122445, November 18, 1997.

[88] Under Presidential Decree No. 223, the Professional Regulation Commission exercises supervisory powers over professional boards; these professional boards exercise administrative, quasi-legislative, and quasi-judicial powers over their respective professions. This includes investigating and adjudicating administrative cases against professionals. Professional Regulation Commission, *Professional Regulatory Boards*, at http://www.prc.gov.ph/prb/. Doctors, for instance, follow the Code of Ethics of the Board of Medicine of the Philippine Regulatory Commission (PRC) and the Code of Ethics of Medical Profession of the Philippine Medical Association (PMA). Complaints regarding a violation of these codes may be taken cognizance by the Commission on Ethics of the PMA (Section 3A, PMA By-laws), or by the Board of Medical Examiners (Section 22, Rep. Act No. 2382).

[89] Doctors who are public officials are subject to Civil Service Laws and the Code of Conduct and Ethical Standards for Public Officials and Employees. See, for instance, *Office of the Ombudsman v. Court of Appeals and Dr. Macabulos*, G.R. No. 159395, May 7, 2008.

CONCURRING AND DISSENTING

DEL CASTILLO, *J.*:

Our nation is at a crossroads.

Perhaps no other piece of legislation in recent history has so bitterly and piercingly divided us as much as Republic Act No. 10354[1] or more popularly known as the RH Law. That this law has cut deeply into the consciousness and wounded the soul of our nation is evident from the profound depth of conviction with which both proponents and opponents of this law have argued their cause before the bar of public opinion, Congress, and. now, before this Court.

With the passage of the RH Law, the present case before us is the last remaining obstacle to its implementation.

The RH Law is primarily a national family planning policy with universal access to contraceptives and informed-free choice as its centerpiece. Its proponents laud the law for what they perceive as a sound and aggressive contraceptive strategy geared towards population control, poverty alleviation, women empowerment, and responsible parenthood. Its opponents, however, deplore the law for what they claim brings about a contraceptive mentality leading to the lowering of moral standards, destruction of marriage and the family, a population winter, and a culture of death.

The path that we, as a nation, will take has already been decided by Congress, as representatives of the people, under our system of government. The task before the Court, then, is not to say which path we ought to take but to determine if the chosen path treads on unconstitutional grounds. But this is not all. For the Court, which was once generally a passive organ in our constitutional order, has been given expanded powers under the present Constitution. It is now not only its right but its bounden duty to determine grave abuse of discretion on the part of any branch, instrumentality or agency of government,[2] and, equally important, it has been given the power to issue rules for the protection and enforcement of constitutional rights.[3] The Court cannot, therefore, remain an idle spectator or a disinterested referee when constitutional rights are at stake. It is its duty to protect and defend constitutional rights for otherwise its *raison d'etre* will cease.

With these considerations in mind, I am of the view that the social gains or ills, whether imagined or real, resulting from the implementation of the RH Law is beyond the scope of judicial review. Thus, even if we assume that the grave and catastrophic predictions of the opponents of the RH Law manifest itself later on, the remedy would lie with Congress to repeal or amend the law. We have entrusted our destiny as a nation to this system of government with the underlying hope that Congress will find the enlightenment and muster the will to change the course they have set under this law should it prove unwise or detrimental to the life of our nation. The battle in this regard remains within the legislative sphere. And there is no obstacle for the1 law's opponents to continue fighting the good fight in the halls of Congress, if they so choose. Thus, the Court will refrain from ruling on the validity of the RH Law based on its wisdom or expediency.

This is not to say, however, that this law is beyond judicial scrutiny. While I will tackle several constitutional questions presented before this Court in this Opinion, it is my considered view that the paramount issue, which is properly the subject of constitutional litigation, hinges on two vital questions: (1) when does the life of the unborn begin? and (2) how do we ought to protect and defend this life?

On the first question, I am fully in accord with the result reached by the *ponencia*. Absent a clear and unequivocal constitutional prohibition on the manufacture, distribution, and use of contraceptives, there is nothing to prevent Congress from adopting a national family planning policy *provided* that the contraceptives that will be used pursuant thereto do not harm or destroy the life of the unborn from conception, which is synonymous to fertilization, under Article II, Section 12[4] of the Constitution. The plain meaning of this constitutional provision and the deliberations of the Constitutional Commission bare this out.

It is upon the answer to the second question, however, where I find myself unable to fully agree with the *ponencia*. Congress accomplished a commendable undertaking when it passed the RH Law with *utmost respect* for the life of the unborn from conception/fertilization. Indeed, this law is replete with provisions seeking to protect and uphold the right to life of the unborn in consonance with the Constitution.

However, where the task of Congress ends, the Court's charge begins for it is mandated by the Constitution to protect and defend constitutional rights. With the impending implementation of the RH Law, the Court cannot turn a blind eye when the right to life of the unborn may be imperiled or jeopardized. Within its constitutionally-mandated role as guardian and defender of constitutional rights, in general, and its expanded power to issue rules for the protection and enforcement of such rights, in particular, the Court may, thus, issue such orders as are necessary and essential to protect, defend and enforce the right to life of the unborn.

The framers of, and the people who ratified the Constitution set in bold and deft strokes the protection of the life of the unborn from conception/fertilization because it is *precious, sacred* and *inviolable*. For as long as this precept remains written in our Constitution, our solemn duty is to stay the course in fidelity to the most cherished values and wisdom of those who came before us and to whom we entrusted the writing and ratification of our Constitution. History will judge this Court on what it did or did

not do to protect the life of the unborn from conception/fertilization. There is, therefore, no other recourse but for this Court to act in defense of the life of the unborn.

These reasons primarily impel the writing of this Opinion.

Deliberations of the Constitutional Commission on Article II, Section 12 of the Constitution.

Article II, Section 1.2 of the Constitution provides, in part:

> Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn **from conception**, xxx (Emphasis supplied)

Article II, Section 12 of the present Constitution was originally Article II, Section 9 of the draft of the Constitution:

> Section 9. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic social institution. The State shall equally protect the life of the mother and the life of the unborn **from the moment of conception**.[5] x x x (Emphasis supplied)

The draft of the Constitution was slightly differently worded as it made use of the phrase "from the moment of conception" while its present wording is "from conception." The change in wording, as will be discussed later, was to simplify the phraseology. But the intended meaning of both phrases, as deliberated by the Constitutional Commission, is the same.

The background and basis of the subject constitutional provision were explained in the sponsorship speech of Commissioner Villegas. He emphasized that, based on incontrovertible scientific evidence, the fertilized ovum is alive; that this life is human; and that the fertilized ovum is a human person. Though that last point, he acknowledged, was highly contested in law. Commissioner Villegas went on to discuss why abortion could not be justified even in so-called hard cases such as pregnancies resulting from rape or incest; pregnancies of mentally ill mothers; and pregnancies of mothers mired in abject poverty.

The justification for disallowing abortion in hard cases sets the tone on the nature of the right to life of the unborn, as a fundamental right, that recurs throughout the deliberations:

> The main reason why we should say "no" (to abortion in hard cases) are: (1) a wrong cannot be righted by another wrong, (2) no one should be deprived of human life **without due process** and we have established scientifically that from the moment of conception, the fertilized ovum has already life; and (3) a fetus, just like any human, must be **presumed innocent unless proven guilty**. It is quite obvious that the fetus has done no wrong. Its only wrong is to be an unwanted baby.[6] (Emphasis supplied)

Commissioner Villegas would later re-emphasize this' point at the end of his sponsorship speech, thus:

> What is being affirmed in this formulation is the **moral right** as well as the **constitutional right of the unborn child to life**, x x x The views I express here transcend religious differences. As I have declared in another occasion, this is not a Roman Catholic position. Since time immemorial, even before Christianity was brought to our soil, as you very well know, our ancestors referred to the baby in the womb of the mother as tao— siya'y nagdadalang-tao. Ang dinadala ay tao; hindi halaman, hindi hayop, hindi palaka— tao.
>
> Madam President, let me also quote from a non-Christian in. our Commission. In a public hearing, the honorable Commissioner Uka said the following: "As a Muslim, I believe in,the Ten Commandments, and one of the Ten Commandments is "Thou shalt not kill," From the time of conception, there is already life. Now if you put down that life, there is already killing, a violation of one of the Ten Commandments. The overwhelming majority of Filipinos agree with Commissioner Uka that we should support Section 9. We have received up to now more man 50,000 signatures from all over the Philippines, from individuals belonging to all walks of life. I do not think there is any other issue in which we have been bombarded with, more numerous, signatures. Let us, therefore, listen to all of them and mandate that the State should equally protect the life of the mother and the unborn from the moment of conception.[7] (Emphasis supplied)

Subsequently, Commissioner Nolledo would re-echo these views:

> Killing the fetus, while categorized as abortion in our Revised Penal Code, is plain murder because of its inability to defend itself. Let the unborn, Madam President, the unborn which is cherished, precious and loving gift of God, enjoy constitutional protection in a Christian country like ours.[8]

The subject constitutional, provision, thus, sought to *recognize* the right to life of the unborn as a fundamental right. As Commissioner Padilla observed:

> Madam President, after the sponsorship of Commissioner Villegas on Section 9, I wanted to state that I fully concur with his views in support of Section 9 on the right of the unborn from conception. I found his exposition to be logical, not necessarily creative, much less critical, but logical. Madam President, I would like to state that the Revised Penal Code does not only penalize infanticide but it has various provisions penalizing abortion; Article 256, intentional abortion; Article 257, unintentional abortion; Article 258, abortion practiced by the woman herself or by her parents; and Article 259, abortion practiced by a physician or midwife and dispensing of abortives.
>
> However, I believe the intention of the proponents of Section 9 is not only to affirm this punitive provision in the Penal Code **but to make clear that it is a fundamental right that deserves to be mentioned in the Constitution**.[9] (Emphasis supplied)

The unique status of the fundamental right accorded to the unborn was explored in later discussions. It was emphasized that the subject constitutional provision was intended to protect only the right to life of the unborn unlike the human person who enjoys the right to life, liberty and property:

> MR. SUAREZ. Going to these unborn children who will be given protection from the moment of conception, does the Commissioner have in mind giving them also proprietary rights, like the right to inheritance?
>
> MR. VILLEGAS. No, Madam President. Precisely, the question of whether or not that unborn is a legal person who can acquire property is completely a secondary question. **The only right that we want to protect from the moment of conception is the right to life, which is the beginning of all other rights.**
>
> MR. SUAREZ. So, only the right to life,
>
> MR. VILLEGAS. Yes, it is very clear, only the right to life.
>
> MR. SUAREZ. **That is the only right that is constitutionally protected by the State**.
>
> MR. VILLEGAS. That is right, Madam President.[10] (Emphasis supplied)

The deliberations also revealed that the subject constitutional provision was intended to prevent the Court from making a *Roe v. Wade*[11] ruling in our jurisdiction:

> MR. VILLEGAS. Yes, Madam President. As Commissioner Padilla already said, it is important that we have a constitutional provision that is more basic than the existing laws. In countries like the United States, they get involved in some ridiculous internal contradictions in their laws when they give the child the right to damages received while yet unborn, to inheritance, to blood transfusion over its mother's objection, to have a guardian appointed and other rights of citizenship; but they do not give him the right to life.
>
> As has happened after that infamous 1972 U.S. Supreme Court decision (Roe v. Wade), babies can be killed, all the way up to 8 and 8 ½ months. So precisely this basic provision is necessary because inferior laws are sometimes imperfect and completely distorted. We have to make sure that the basic law will prevent all of these internal contradictions found in American jurisprudence because Filipino lawyers very often cite American jurisprudence.[12]
>
> xxxx
>
> MR. VILLEGAS. As I have said, we must prevent any possibility of legalized abortion, because there is enough jurisprudence that may be used by Congress or by our Supreme Court.
>
> Let me just read what happened after the *Roe v. Wade* decision in the U.S. Supreme Court, x x x
>
> So, these are the floodgates that are open?

REV. RIGOS. Which are?

MR. VILLEGAS. As I said, American jurisprudence looms large on Philippine practice and because it is a transcendental issue, we have to completely remove the possibility of our Congress and our Supreme Court following this tragic trail.[13]

There was, thus, a clear rejection of the theory used in *Roe v. Wade* that the test of human personality was viability. Further, the subject constitutional provision was intended to prohibit Congress from legalizing abortion:

MR. VILLEGAS. "Protection" means any attempt on the life of the child from the moment of conception can be considered abortion and can, be criminal.

MR. SUAREZ. So, principally and exclusively, if I may say so, what the Commissioner has in mind is only an act outlawing abortion.

MR. VILLEGAS. Exactly, Madam President.

MR. SUAREZ. So that is the real thrust and meaning of this particular provision.

MR. VILLEGAS. That is right.

MR. SUAREZ. Can we not just spell it out in our Constitution that abortion, is outlawed, without stating the right to life of the unborn from the moment of conception, Madam President?

MR. VILLEGAS. No, because that would already be getting into the legal technicalities. That is already legislation. The moment we have this provision, all laws making abortion possible would be unconstitutional. That is the purpose of this provision, Madam President.[14]

x x x x

MR. NATIVIDAD. Madam President, I rose to ask these questions because I had the impression that this provision of the Constitution would prevent future Congresses from enacting laws legalizing abortion. Is my perception correct, Madam President?

MR. VILLEGAS. Exactly. Congress cannot legalize abortion. It would be unconstitutional.

MR. NATIVEDAD. In what way will it collide with this provision?

MR. VILLEGAS. Any direct killing of the unborn from 'the moment of conception would be going against the Constitution and, therefore, that law would be, if Congress attempts to make it legal, unconstitutional.[15]

The sole exception to this constitutional prohibition against abortion is when there is a need, in rare cases, to save the life of the mother which indirectly sacrifices the unborn's life under the principle of double effect:

MR. BENNAGEN. In making a decision as to which life takes priority, the life of the mother or the life of the unborn, what criteria are contemplated by the committee on which to base the decision?

MR. VILLEGAS. We have articulated this moral principle called the principle of double effect. Whenever there is need, for example, to perform a surgical operation on the mother because of a disease or some organic malfunctioning, then the direct intention is to save the mother. And if indirectly the child's life has to be sacrificed, that would not be abortion, that would not be killing. So, in those situations which we said are becoming rarer and rarer because of the tremendous advance of medical science, the mother's life is safe.[16]

Intricately related to the prohibition of legalizing abortion was the intention to prevent Congress, through future legislation, from defining when life begins other than at the time of fertilization:

MR. DAVIDE. Precisely. So, insofar as the unborn is concerned, life begins at the first moment of conception. **Therefore, there is no need to delete. There is no need to leave it to Congress because that is a matter settled in medicine.**

xxxx

REV. RIGOS. Yes, we think that the word "unborn" is sufficient for the purpose of writing a Constitution, without specifying "from the moment of conception.

MR. DAVIDE. I would not subscribe to that particular view because according to the Commissioner's own admission, he would leave it to Congress to define when life begins. So, Congress can define life to begin from six months after fertilization; and that would really be very, very dangerous. It is now determined by science that life begins from the moment of conception. There can be no doubt about it. **So, we should not give any doubt to Congress, too.**

Thank you, Madam President. (*Applause*)[17] (Emphasis supplied)

Much of the debates, however, centered on the meaning of the phrase "from the moment of conception." It is clear from the deliberations that the intended meaning of the phrase "from the moment of conception" was fertilization or the moment the egg is fertilized by the sperm.

REV. RIGOS. In Section 9, page 3, there is a sentence which reads:

The State shall equally protect the life of the mother and the life of the unborn from the moment of conception.

When is the moment of conception?

x x x x

MR. VILLEGAS. As I explained in the sponsorship speech, **it is when the ovum is fertilized by the sperm that there is human life**. Just to repeat: first, there is obviously life because it starts to nourish itself, it starts to grow as any living being, and it is human because at the moment of fertilization, the chromosomes that combined in the fertilized ovum are the chromosomes that are uniquely found in human beings and are not found in any other living being.[18] (Emphasis supplied)

Significantly, the framers intentionally made use of the term "from the moment of conception" so that the people who will ratify the Constitution would easily understand its meaning:

MR. TINGSON. We would like Commissioner Rigos to know that the phrase "from the moment of conception" was described by us here before with the scientific phrase "fertilized ovum." However, we figured in the committee that the phrase "fertilized ovum" may be beyond the comprehension of some people; we want to use the simpler phrase "from the moment of conception."[19]

During the deliberations, the meaning of "from the moment of conception" was *repeatedly* reaffirmed as pertaining to the fertilization of the egg by the sperm. As a necessary consequence of this definition, any drug or device that harms the unborn from the moment of fertilization is considered an abortifacient and should be banned by the State:

MR. GASCON. Mr. Presiding Officer, I would like to ask a question on that point. Actually that is one of the questions I was going to raise during the period of interpellations but it has been expressed already. The provision, as it is proposed right now, states:

> The State shall equally protect the life of the mother and the life of the unborn from the moment of conception.

When it speaks of "from the moment of conception," does this mean when the egg meets the sperm?

MR. VILLEGAS. Yes, the ovum, is fertilized by the sperm.

MR. GASCON. Therefore, that does not leave to Congress the right to determine whether certain contraceptives that we know of today are abortifacient or not because it is a fact that some of these so-called contraceptives deter the rooting of the fertilized ovum in the uterus. If fertilization has already occurred, the next process is for the fertilized ovum to travel towards the uterus and to take root. What happens with some contraceptives is that they stop the opportunity for the fertilized ovum to reach the uterus. Therefore, if we take the provision as it is proposed, these so-called contraceptives should be banned.

MR. VILLEGAS. **Yes, if that physical feet is established, then that is what we call abortifacient and, therefore,**

> **would be unconstitutional and should be banned under this provision**.[20] (Emphasis supplied)

This was further confirmed in the following exchanges:

> MR. GASCON, x x x
>
> x x x x
>
> I mentioned that if we institutionalize the term "the life of the unborn from the moment of conception," we are also actually saying "no," not "maybe" to certain contraceptives which are already being encouraged at this point in time. Is that the sense of the committee or docs it disagree with me?
>
> MR. AZCUNA. No, Mr. Presiding Officer, because contraceptives would be preventive. There is no unborn yet. That is yet unshaped.
>
> MR. GASCON. Yes, Mr. Presiding Officer, but I was speaking more about some contraceptives, such as the infra-uterine device which actually stops the egg which has already been fertilized from taking route to the uterus. So, if we say "from the moment of conception," **what really occurs is that some of these contraceptives will have to be unconstitutionalized.**
>
> MR. AZCUNA. **Yes, to the extent that it is after the fertilization**, Mr. Presiding Officer.[21] (Emphasis supplied)

Later, Commissioner Padilla initiated moves to reword the phrase "from the moment of conception" to "from conception" to simplify the phraseology of the subject constitutional provision without deviating from its original meaning, that is, conception pertains to fertilization.[22]

The real challenge to the proponents of the subject constitutional provision, however, was the move by several members of the Commission to change the phrase "protect the life of the mother and the life of the unborn from the moment of conception" to "protect the life of the mother and the life of the unborn." In other words, there was a move to delete the phrase "from, the moment of conception." Opponents. of the subject constitutional provision argued mat the determination of when life begins should be left to Congress to address in a future legislation where there is greater opportunity to debate the issues dealing with human personality and when it begins.[23]

After a lengthy exchange, the proponents of the subject constitutional provision scored a decisive victory when the final voting on whether to retain or delete the phrase "from the moment of conception" was held:

> THE PRESIDENT, x x x So, if the vote is "yes", it is to delete "from the moment of conception." If the vote is "no," then that means to say that the phrase "from the moment of conception" remains.[24]
>
> x x x x
>
> THE PRESIDENT. The results show 8 votes in favor and 32 against; so, the proposed Rigos amendment is lost.[25]

Hence, the phrase "from the moment of conception" was retained. Subsequently, the Padilla amendment was put to a vote. With a vote of 33 in favor, 3 against, and 4 abstentions, the Padilla amendment was approved. Thus, the present wording of the second sentence of Article II, Section 12 of the Constitution makes use of the simplified phrase "from conception."

Key Characteristics of Article II, Section 12

Several important characteristics or observations may be made on the nature, scope and significance of Article II, Section 12 of the Constitution relative to the protection of the life of the unborn based on the deliberations of the Constitutional Commission.

First, the framers were unequivocal in their intent to define "conception" as the fertilization of the egg by the sperm and to' accord constitutional protection to the life of the unborn from the moment of fertilization. The plain meaning of the term "conception," as synonymous to fertilization, based on dictionaries and medical textbooks, as aptly and extensively discussed by the *ponencia*, confirm this construction. In addition, petitioners correctly argue that the definition of "conception," as equivalent to fertilization, was the same definition prevailing during the 1980's or at around the time the 1987 Constitution was ratified.26 Hence, under the rule of constitutional construction, which gives weight to how the term was understood by the people who ratified the Constitution, "conception" should be understood as fertilization.

Second, the protection of the life of the unborn under Article II, Section 12

is a self-executing provision because:

(1) It prevents Congress from legalizing abortion; from passing laws which authorize the use of abortifacients; and from passing laws which will determine when life begins other than from the moment of conception/fertilization;
(2) It prevents the Supreme Court from making a *Roe v. Wade*[29] ruling in our jurisdiction; and
(3) It obligates the Executive to ban contraceptives which act as abortifacients or those which harm or destroy the unborn from conception/fertilization.

Article II, Section 12 is, thus, a direct, immediate and effective limitation on the three great branches of government and a positive command on the State to protect the life of the unborn.

Third, Article H, Section 12 recognized a *sui generis* constitutional right to life of the unborn. The framers repeatedly treated or referred to the right to life of the unborn as a fundamental right and thereby acknowledged that the unborn is a proper subject of a constitutional right. That this right is founded on natural law and is self-executing further provides the unmistakable basis and intent to accord, it the status of a constitutional right. However, it is *sui generis* because, unlike a person who possesses the right to life, liberty and property, the unborn's fundamental right is solely limited to the right to life as was the intention of the framers. Clearly, then, Article II, Section 12 recognized a *sui generis* right to life of the unborn from conception/fertilization and elevated it to the status of a constitutional right.

Fourth, because the unborn has been accorded a constitutional right to life from conception/fertilization under Article II, Section 12, this right falls within the ambit of the Court's power to issue rules for the protection and enforcement of constitutional rights under Article VIII, Section 5(5) of the Constitution:

> Sections. The Supreme Court shall have the following powers:
>
> xxxx
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, x x x. Rules of procedure, of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

This is *significant* because it imposes upon this Court the duty to protect such right pursuant to its rule-making powers. In recent times, the Court acknowledged that the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature under Article II, Section. 16 of the Constitution, though found in the Declaration of Principles and Policies (like the subject right to life of the unborn) and not in the Bill of Rights, may be given flesh pursuant to the power of the Court to issue rules for the protection and enforcement of constitutional rights. It, thus, proceeded to promulgate the rules governing the Writ of *Kalikasan*.[29]

With *far* greater reason should the Court wield this power here because the unborn is totally defenseless and must rely wholly on the State to represent its interest in-matters affecting the protection and preservation of its very life. It does not necessarily follow, however, that the Court should issue a set of rules to protect the life of the unborn like the Writ of *Kalikasan*. How the Court is to protect and enforce the constitutional right to life of the unborn, within the context of the RH Law, is the central theme of this Opinion.

With the groundwork constitutional principles in place, I now proceed to tackle the constitutionality of the RH Law and its Implementing Rules and Regulations (ERR).

The RH Law does not contravene Article II,
Section 12 of the Constitution.

The RH Law prohibits the use of abortifacients hi several provisions in consonance with Article II, Section 12 of the Constitution, to wit:

(1) Section 2:

> SEC. 2. *Declaration of Policy*. - x x x
>
> The State likewise guarantees universal access to medically-safe, **non-abortifacient**, effective, legal, affordable, and quality reproductive health care services, methods, devices, supplies **which do not prevent the implantation of a fertilized ovum** as determined by the Food and Drug Administration (FDA) and relevant information and education thereon according to the priority needs of women, children and other underprivileged sectors, giving preferential access to those identified through the National Household Targeting System for Poverty Reduction (NHTS-PR) and oilier government measures of identifying marginalizalion, who shall be voluntary beneficiaries of reproductive health care, services and supplies for free. (Emphasis supplied)

(2) Section 3:

SEC. 3. *Guiding Principles for Implementation.* - This Act declares the following as guiding principles: x x x

(d) The provision of ethical and medically safe, legal, accessible, affordable, **non-abortifacient**, effective and quality reproductive health care services and supplies is essential in the promotion of people's right to health, especially those of women, the poor, and -the marginalized, and shall be incorporated as a component of basic health care;

(c) The State shall promote and provide information and access, without bias, to all methods of family planning, including effective natural and modern methods which have been proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards such as those registered and approved by the FDA for the poor and marginalized as identified through the NHTS-PR and other government measures of identifying marginalization: Provided, That the State shall also provide funding support to promote modern natural methods of family planning, especially the Billings Ovulation Method, consistent with the needs of acceptors and their religious convictions; x x x

(j) **While this Act recognizes that abortion is illegal and punishable by law**, the government shall ensure that all women needing care for post-abortive complications and all other complications arising from pregnancy, labor and delivery and related issues shall be treated and counseled in a humane, nonjudgmental and compassionate manner in accordance with law and medical ethics; (Emphasis supplied)

(3) Section 4:

SEC. 4. *Definition of Terms*. - For the purpose of this Act, the following terms shall be defined as follows: x x x

(a) ***Abortifacient*** **refers to any drag or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the EDA.**

xxxx

(e) *Family planning* refers to a program which enables couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and to have access to a fall range of safe, affordable, effective, **non-abortifacient** modem natural and artificial methods of planning pregnancy.

xxxx

(1) *Modern methods of family planning* refers to safe, effective, **non-abortifacient** and legal methods, whether natural or artificial, that are registered with the FDA, to plan pregnancy.

xxxx

(s) *Reproductive health rights* refers to the rights of individuals and couples, to decide freely and responsibly whether or not to have children; the number, spacing and timing of their children; to make oilier decisions concerning reproduction, free of discrimination, coercion and violence; to have the information and means to do so; and to attain the highest standard of sexual health and reproductive health: **Provided, however, That reproductive health rights do not include abortion, and access to abortifacients.** (Emphasis supplied)

(4) Section 9:

SEC. 9. *The Philippine National Drug Formulary System and Family Planning Supplies.* - The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, **non-abortifacient** and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drags including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, any product or supply included or to be included in the EDL **must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.**

These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: **Provided, further, That the foregoing offices shall not purchase or acquire by any means**

emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent. (Emphasis supplied)

The key provision is found in Section 4(a) which defines an "abortifacient" as "any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA." That last phrase which effectively bans contraceptives that prevent the fertilized ovum from reaching and being implanted in the mother's womb guarantees that the fertilized ovum will not be harmed or destroyed from the moment of fertilization until its implantation. Thus, the RH Law protects the unborn from conception/fertilization in consonance with the Constitution.

As earlier noted, the RH Law is to be commended for its zealous protection of the life of the unborn from conception/fertilization. It repeatedly emphasizes that the contraceptives which will be made available under the law should be non-abortifacient. It prohibits the use of abortifacients and penalizes the use thereof. Thus, it cannot be said that: the law violates Article II, Section 12 of the Constitution.

The IRR's definition of "abortifacient" and "contraceptive" contravenes Article II, Section 12 of the Constitution and, the RH Law itself.

Petitioners Alliance for the Family Foundation Philippines, Inc. (ALF1) *et al.* areue:

9.1.9 The IRRs, which have been signed by the Secretary of Health himself, among others, veer away from the definition of the term "abortifacient" in SEC. 4 (a) of the RH Law, such that in the IRRs, the term has, in effect, been re-defined.

9.1.10 Rule 3 - Definition of Terms, Section 3.01 (a) of the IRRs, as signed, states:

"***Abortifacient*** refers to any drug or. device that **primarily** induces abortion or the destruction of a fetus inside the mother's womb or the prevention of (lie fertilized ovum to reach and be implanted in the mother's womb upon determination of the Food and Drug Administration (FDA)."

And "**primarily**" means the drug or device has **no other known effect aside from abortion**, (footnote 14, IRRs)

9.1.11 xxxx

9.1.12 One can readily spot how the insertion of the word "primarily" has radically, if not deceptively, changed the meaning of "Abortifacient" under the RH Law. As explained above, the primary mechanism of action of contraceptives is really to prevent ovulation or fertilization, but this does not happen all the time because in some instances break through ovulation occurs and the built-in and back-up abortive action sets in. With the definition under the IRR, abortifacient contraceptives will not be classified as abortifacients. because they do not "primarily" and "solely" cause abortion or are abortive. Well, this should not be surprising anymore because as indicated in the explanatory note of the IRRs, the only goal is to save [the] mother's lives and to reduce maternal mortality rate, without any reference to saving the life of the unborn child or decreasing infant mortality rate.

9.1.13. Clearly, but unfortunately, **the true legislative intent is**: for the State to fund and fully implement the procurement and widespread dissemination and use of all forms of contraceptive products, supplies and **devices, even if they are abortifacient and harmful to the health of women**. This goes counter to the. constitutional intent of Section 12, Article II which is to afford protection to the unborn child from the incipient stage of the existence of life, that is, from the very moment of conception or fertilization, and to give equal protection to the life of the mother and the life of the unborn from conception:[30]

I agree.

Section 3.01 (a) of the IRR defines "abortifacient" as:

Section 3.01 For purposes of these Rules, the terms shall be defined as follows:

a) *Abortifacient* refers to any drug or device that **primarily** induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's' womb upon determination, of the Food and Drug Administration (FDA). (Emphasis supplied)

On the oilier hand, the RH Law defines "abortifacient" thus:

SEC. 4. *Definition of Terms.* - For the purpose of this Act, the following terms shall be defined as follows:

(a) **Abortifacient** refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of

the FDA.

Clearly, the addition of the word "primarily" in the IRR is *ultra vires* for it amends or contravenes Section 4(a) of the RH Law.

More importantly, I agree that the insertion of the qualifier "primarily" will open the floodgates to the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution. As defined in the IRR, a drug or device is considered an abortifacient if it "primarily" induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb; where "primarily" means that the drug or device has no other known effect aside from abortion. In other words, under the IRR, a contraceptive will only be considered as an "abortifacient" if its sole known effect is abortion or, as pertinent here, the prevention of the implantation of the fertilized ovum.

Consequently, a drug or device which (a) prevents fertilization, (b) but does not provide a 100% guarantee of such prevention, and (c) has a fail-safe mechanism which will prevent the implantation of the fertilized ovum in case fertilization still occurs will not be considered an "abortifacient" because the known effect thereof is not solely prevention of implantation since (1) it primarily prevents fertilization and (2) only secondarily prevents the implantation of the fertilized ovum in case fertilization still occurs.

However, a drug or device that cannot provide a 100% guarantee that it will prevent fertilization **and** has a fail-safe mechanism which prevents implantation of the fertilized ovum (or harming/destroying the fertilized ovum in any way) if fertilization occurs is unconstitutional under Article II, Section 12 and must be banned by the State. In more concrete terms, if a drug or device provides only a 90% guarantee of prevention of fertilization, then there is a 10% chance mat fertilization will still occur and the fertilized ovum would be destroyed by the failsafe mechanism of the contraceptive.

We cannot play the game of probabilities when life is at stake. The destruction or loss of life is permanent and irrevocable. Our constitutional mandate is to protect the life of the unborn from conception/fertilization. We cannot protect this life 90% of the time and allow its destruction 10% of the time. We either protect this life or we do not. There is nothing in between.

If we are to truly give flesh to the constitutional precept that the life of the unborn from conception/fertilization is precious, sacred and inviolable, all reasonable doubts should be resolved in favor of the protection and preservation of the life of the unborn, and any probability of destruction or loss of such life be absolutely proscribed. The supreme law of the land commands no less.

For parallel reasons, the IRR's definition of "contraceptive" under Section 3.01(j) is unconstitutional because of the insertion of the qualifier "primarily," to wit:

> Section 3.01 For purposes of these Rules, the terms shall be defined as follows:
>
> xxxx
>
> j) *Contraceptive* refers to any safe, legal, effective and scientifically proven modern family planning method, device, or health product, whether natural or artificial, that prevents pregnancy but does not **primarily** destroy a fertilized ovum or prevent a fertilized ovum from being implanted in the mother's womb in do.ses of its approved indication as determined by the Food and Drug Administration (FDA). (Emphasis supplied)

Although the RH Law does not provide a definition of "contraceptive," a reasonable and logical deduction is that "contraceptive" (or allowable contraceptive to be more precise) is the opposite of "abortifacient" as defined under the RH Law. This seems to be the tack adopted by the IRR in defining "contraceptive." However, the IRR's definition of "contraceptive" again added the qualifier "primarily." For similar reasons with the previous discussion on the IRR's definition of "abortifacient," this definition of "contraceptive" opens the floodgates to the approval of contraceptives which are actually abortifacients because of their fail-safe mechanism. Hence, the qualifier "primarily" in Section 3.01(j) is, likewise, void.

In view of the foregoing, the word "primarily" in Section 3.01 (a) and (j) of the IRR should be declared void for (1) contravening Section 4(a) of the RH Law and (2) violating Article II, Section 12 of Constitution.

Within the framework of implementation of the RH Law, it is necessary for this Court to exercise its expanded jurisdiction and power to issue rules for the protection and enforcement of constitutional rights in order to adequately protect the right to life of the unborn.

The Court should not limit its scrutiny to the constitutional validity of the RH Law and its IRR. This is because the right to life of the unborn from conception/fertilization, is a constitutional right properly within the ambit of the Court's power to issue rules for

the protection and enforcement of constitutional rights under Article VIII, Section 5(5) of the Constitution. In Echegaray v. Secretary of Justice,[31] the Court described this power to issue rules as one of the innovations of the present Constitution to expand the powers of the Court:

> The 1987 Constitution molded tin even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court. Its Section 5(5), Article VIII provides:
>
> xxx xxx xxx
>
> "Section 5. The Supreme Court shall have the following powers:
>
> xxx xxx xxx
>
> (5) *Promulgate rules concerning the protection and enforcement of constitutional rights*, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged, Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. *Rules of procedure of special, courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.*"
>
> *The rule malting power of this Court was expanded*. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies, xxx

Viewed in light of the broad power of the Court to issue rules for the protection and enforcement of constitutional rights, the power to disapprove the rules of procedure of quasi-judicial bodies is significant in that it implies the power of the Court to look into the sufficiency of such rules of procedure insofar as they adequately protect and enforce constitutional rights. Moreover, the power to disapprove the aforesaid rules of procedure necessarily includes or implies the power to approve or modify such rules or, on the one extreme, require that such rules of procedure be issued when necessary to protect and enforce constitutional rights, hi other words, within and between the broader power to issue rules for the protection and. enforcement of constitutional rights and the narrower power to disapprove the rules of procedure of quasi-judicial bodies, there exist penumbras of this power that the Court may exercise in order to protect and enforce constitutional rights.

Furthermore, the power to determine when the aforesaid powers may be exercised should be understood in. conjunction with the Court's expanded jurisdiction, under Article VIII, Section 1 of the Constitution, 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."

Taken together, the expanded jurisdiction of the Court and the power to issue rules for the protection and enforcement of constitutional rights provide the bases for the Court (1) to look into the sufficiency of safeguards in the implementation of the RH Law insofar as it will adversely affect the right to life of the unborn, and (2) to issue such orders as are necessary and essential in order to protect and enforce the constitutional right to life of the unborn. This is especially true in this case because the expanded powers of the Court was granted to it to prevent a repeat of the bitter experiences during martial law years when rampant human rights violations occurred. Verily, the expanded powers were conferred on this Court at a great price and were given for a clear purpose. Here, a more basic right—the right to life of the unborn— is at stake; the right from which all human rights emanate.

It should come as no surprise that at a time our nation is set to embark on a great social experiment, where the fall machinery of the State will be utilized to implement an aggressive national family planning policy, the Court should find itself reflecting on the threshold of its constitutionally-mandated powers. The Court is beckoned to courageously sail forth to the new frontiers of its powers in order to stem the tide of oppression, nay destruction, against a *most* vulnerable group that may be trampled upon by this great social experiment. For can there be any group more vulnerable than the unborn?

As they say, we stand on the shoulders of giants. They have blazed the trail for this Court in order that we may see clearly what we *can* and *ought* to do in defense of the life of the unborn. They have seen fit to equip this Court with expanded powers in preparation for a future that they must have known would involve moments of great clashes between the juggernaut of majoritarian interests and the politically powerless and marginalized. *We are in that moment*. And we ought to firmly stand by the legacy and solemn charge that the framers of, and the people who ratified our Constitution conferred upon us.

Against this backdrop, I delineate what the Court in the exercise of its expanded jurisdiction and power to issue rules for the protection and enforcement of constitutional rights is mandated to do in defense of the life of the unborn within the framework of implementation of the RH Law.

The Food and Drug Administration
(FDA) should he directed to issue

the proper rules of procedure that will sufficiently safeguard the right to life of the unborn.

Preliminarily, central to the protection of the right to life of the unborn is the proper determination, through screening, testing and/or evaluation, by the FDA, using the standard under the Constitution., as adopted under the RH Law, on what will constitute allowable contraceptives under the RH Law. During the oral arguments of this case, I delved upon the crucial task that lay ahead for the FDA:

Justice Del Castillo:
Counsel, just a few follow-up questions on contraceptives.

Alty. Noche:
Yes, Your Honor.

Justice Del Castillo:
You have identified contraceptives as abortifacient.

Atty. Noche:
Yes, Your Honor.

Justice Del Castillo:
There are so many contraceptives and the respondents have taken the view that not all are abortifacients. So to resolve this issue, why don't you identify, why don't you name these contraceptives and then let's test them if they are abortifacient then the issue is settled, so instead of making generalization that all contraceptives are abortifacient, don't you think that the proper course of action to take is to identify all these because practically all drugs are abortifacients, even a simple aspirin, so these tire [as a] matter of degree. So, perhaps those that would cause tremendous harm and maybe we can ban them. But unless we have not identified them just to say that all abortifacients, don't' you think that.....

Atty. Noche:
If Your Honor, please, hormonal contraceptives, what we're saying is that hormonal contraceptives which include, you know, the pills, and the injectables, and intrauterine devices, Your Honor, and the patches, Your Honor, implants they're proven to be abortifacients, Your Honor. Vasectomy, sterilization procedures, Your Honor, they are also referred to as contraceptives, Your Honor, but they are not abortifacients because they don't contain hormones. Your Honor.

Justice Del Castillo:
No, I was suggesting that because the respondents would also come out with their own authorities, so to resolve it once and for all, let's test them.

Atty. Noche:
If Your Honor, please, we also have an objection about giving, of course, I'm sure, Your Honor, I've been referring to delegating the authority to the Food and Drug Administration, so we have a problem with that, Your Honor, because, I mean, these hormonal contraceptives are proven to be abortifacients. Your Honor, and.... (interrupted)

Justice Del Castillo:
I am not just referring to the Food and Drug Administration. My point is, let's put it to test because this is just x x x evidentiary, it's a matter of fact, we cannot make generalizations. [They're] saying that these are not abortifacients, you are saying x x x that they are abortifacients, then let's prove it That is just my suggestion.

Atty. Noche:
If Your Honor, please, may I, you know, bring out the very important point that we have always tried to bring out, Your Honor. Section 12, otherwise, we forget this, Section 12, Article II mandates the protection of the unborn from conception. And that protection is not just from death but from any risks or threat of harm, or injury or any form or degree, remote or direct, momentary or permanent and it has proven already mat anything, Your Honor, that you introduce into the body that disrupts the, you know, workings in the uterus or the physiology in the uterus is harmful to the fertilized ovum so..... (interrupted)

Justice Del Castillo:
Yes, Counsel, but the protection comes in only after, if I may grant you, the fertilization. But before that, the unborn is not protected, the unborn is protected from conception so before that it's not [a] regulated act.

Atty. Noche:
If Your Honor, please, before fertilization there is no person to speak of.

Justice Del Castillo:
Exactly.

Atty. Noche:
There is no fertilized ovum, to speak of, mere is no unborn that needs any protection, Your Honor, at least, under Section 12. So, really the protection that we are referring to under Section 12 is protection that starts from conception. That is when we say they're already a person in that fertilized ovum mat the Constitution mandates, that the State protects, Your Honor.

Justice Del Castillo:
I even concede mat upon the meeting of the egg and the sperm x x x mere is life already,, it should, be protected, I concede that.

Atty. Noche:
Thank you, very much, Your Honor, for saying that because that's really life there.

Justice Del Castillo:
Thank you, Counsel.[33]

Under Section 4(a) of the RH Law, the FDA is charged with the task of determining which contraceptives are not abortifacients:

SEC. 4. *Definition of Terms.* - For the purpose of this Act, the following terms shall be defined as follows:

(a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb **upon determination of the FDA.** (Emphasis supplied)

The drugs or devices, which will be approved by the FDA, will then be included in the National Drug Formulary and Essential Drugs List as provided under Section 9 of the RH Law:

SEC. 9. *The Philippine National Drug Formulary System arid Family Planning Supplies.* - The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance .with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, any product or supply included or to be included in Hie EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.

These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: *Provided, further,* That the foregoing offices shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent.

Contrary to the interpretation of petitioners, Section 9 does not automatically mandate the inclusion of hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies in the National Drug Formulary and Essential Drugs List. This provision should be read in relation to Section 4(a) of the RH Law which requires the FDA to first determine whether the subject contraceptives are non-abortifacients, among other standards (*e.g.*, safe, effective). The law should be construed in such a way as to avoid a declaration of unconstitutionality.

The]RR provides the following guidelines for such determination, *viz*:

Section 7.04 *FDA Certification of Family Planning Supplies.* The FDA must certify that a family planning drug or device is not an abortifacient in dosages of its approved indication (for drugs) or intended use (for devices) prior to its inclusion in the EDL. The FDA shall observe the following guidelines in the determination of whether or not a drug or device is an abortifacient:

a) As defined in Section 3.01 (a) of these Rules, a drug or device is deemed to be an abortifacient if it is proven to primarily[34] induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized, ovum, to reach and be implanted in the mother's womb;

b) The following mechanisms do not constitute abortion: the prevention of ovulation; the direct action on sperm cells prior to fertilization; the thickening of cervical mucus; and any mechanism acting exclusively prior to the fertilization of the egg by the sperm;
c) In making its determination, the FDA shall use the best evidence available, including but not limited to: meta-analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations;
d) In the presence of conflicting evidence, the more recent, better- designed, and larger studies shall be preferred, and 1ihe conclusions found therein shall be used to determine whether or not a drug or device is an abortifacient; and
e) Should the FDA require additional expertise in making its determination, an, independent evidence review group (ERG) composed of leading experts in the fields of pharmacodynamics, medical research, evidence-based medicine, and other relevant fields may be convened to review the available evidence. The FDA shall then issue its certification based on the recommendations of the ERG.

It is only proper for the Court to recognize that the FDA possesses the requisite technical skills and expertise in determining whether a particular drug or device is an abortifacient. It is also only proper that the Court accords deference to this legislative delegation of powers to the FDA for this purpose. However, for obvious reasons, the unborn cannot appear, on its behalf, to represent or protect its interest, bearing upon its very right to life, when the FDA proceeds to make such a determination.

Within this framework of implementation, and given the unique status of the unborn and the exceptional need, to protect its right to life, the Court *must* step in by directing the FDA to issue the *proper* rules of procedure in the determination of whether a drug or device is an abortifacient under the RH Law. Such rules must *sufficiently* safeguard the right to life of the unborn. As a penumbra of its power to issue rules to protect and enforce constitutional rights and its power to disapprove rules of procedure of quasi-judicial bodies, the Court has the power and competency to mandate the minimum requirements of due process in order to sufficiently safeguard the right to life of the unborn in the proceedings that will be conducted before the FDA. This is in line with the declared policy and numerous provisions of the RH Law according *utmost* respect and protection for the right to life of the unborn.

In determining whether a drug or device is an abortifacient, the FDA will necessarily engage in a quasi-judicial function. It will determine whether a set of facts (active properties or mechanisms of a drug or device) comply with a legal standard (definition of non-abortifacient) which will ultimately bear upon the right to life of the unborn. Considering that quasi-judicial bodies involved in, say, rate-fixing follow the due process requirements of publication, notice and hearing, where the lesser right to property is involved, then with far greater reason should the proceedings before the FDA require publication, notice and hearing.

Any erroneous determination the FDA makes can result to the destruction or loss of the life of the unborn. Plainly, the life and death of countless, faceless imborns hang in the balance. Thus, the determination should be made with *utmost care* where the interest of the unborn is *adequately represented.*

Consequently, the Solicitor General should be mandated to represent the unborn and the State's interest in the protection of the life of the unborn from conception/fertilization in the proceedings before the FDA. If the Solicitor General is made to represent the State's interest in, say, cases involving declaration of nullity of marriage, then, again, with *far* greater reason, should it be made to represent the unborn and State's interest in protecting the life of the unborn. Interested parties should also be allowed to intervene in the proceedings for all persons have a valid and substantial interest in the protection of the right to life of the unborn under the concept of intergenerational responsibility.[35]

In making the aforesaid determination, the FDA should follow the strict standards laid down in the Constitution, as adopted in the RH Law, as to what constitute allowable contraceptives. The IRR has provided guidelines as to what constitute allowable contraceptives but these guidelines should be applied only insofar as they do not contravene the standard laid down in the Constitution. Given the advances in science and medicine, drugs or devices may be developed which satisfy the guidelines in the IRR but still result to the destruction of the unborn from fertilization. (This was the case with the contraceptive with a fail-safe mechanism which required the voiding of the subject qualifiers in the IRR's definition of terms, as previously discussed.)

The Constitution is always the polestar, the drug or device should not harm or destroy the life of the unborn from conception/ fertilization. Necessarily, the rule of evidence to be followed by (lie FDA, in consonance with the Constitution, is that, in weighing the evidence as to whether a drug or device is an abortifacient, all reasonable doubt should be resolved in favor of the right to life of the unborn from conception/fertilization.

Finally, the other requirements of administrative due process laid down in the seminal case of *Ang Tihay v. The Court of Industrial Relations*[36] should be followed.

The other details of the rules of procedure should be left to the sound discretion of the FDA. However, the FDA must ensure that these details sufficiently safeguard the life of the unborn.

In sum, I find that the Court should, issue an order:

(1) directing the FDA to formulate the rules of procedure in the screening, evaluation and approval of all contraceptives that will be used under the RH Law,

(2) the rules of procedure shall contain the following minimum requirements of due process:

(a) publication, notice and hearing,

(b) the Solicitor General shall be mandated to represent the unborn and the State's interest in the protection of the life of the unborn,

(c) interested parties shall be allowed to intervene,

(d) the standard laid down in the Constitution, as adopted under the RH Law, as to what constitute allowable contraceptives shall be strictly followed, *i.e*., those which do not harm or destroy the life of the unborn from conception/fertilization,

(e) in weighing the evidence, all reasonable doubts shall be resolved in favor of the right to life of the unborn from conception/ fertilization, and

(f) the other requirements of administrative due process, as summarized in *Ang Tibay*, shall be complied with.

The FDA should be directed to submit these rules of procedure, within 30 days from receipt of the Court's decision, for the Court's appropriate action.

The FDA should be directed to inform this Court as to whether the contraceptives that it previously approved and is currently available for use and distribution in our jurisdiction comply with the constitutional standard of allowable contraceptives.

In his Memorandum, the Solicitor General stated that —

> 49. There are currently fifty-nine (59) contraceptive drugs and seven (7) intrauterine devices duly approved for sale by the FDA and currently available in the market x x x"

However, the Solicitor General did not categorically state that these drugs and devices were screened, evaluated and/or tested under the standard laid down in Article II, Section 12 of the Constitution, as adopted under Section 4(a) of RH Law. The apparent reason for this seems to be that these dings and devices were screened, evaluated and/or tested by the FDA *prior to* the enactment of the RH Law and the ruling that the Court now categorically makes in this case.

Plainly, it would not make sense to impose strict rules of procedure for the evaluation of contraceptives that will be used under the RH Law while allowing a *possible* continuing violation of the Constitution relative to contraceptive dings and devices that were previously approved by the FDA and are currently being used and/or distributed in our jurisdiction.

There is, thus, an *urgent necessity* to determine if the aforesaid contraceptive drugs and devices comply with the Constitution and RH Law, i.e. they do not harm or destroy the unborn from conception/fertilization, in general, and they do not prevent the implantation of the fertilized ovum, in particular. Also, of particular significance is whether the FDA evaluated the currently available contraceptive drugs and devices against the standard laid down, as discussed in a previous subsection, concerning unallowable contraceptives which (1) do not provide a 100% guarantee of preventing fertilization and (2) has a fail-safe mechanism which destroys the fertilized ovum if fertilization occurs (e.g., prevents the implantation of the fertilized ovum on the uterus).

Thus, the FDA should be ordered to immediately inform this Court whether its previously approved and the currently available contraceptive dings and devices in our jurisdiction *were* screened, evaluated and/or tested against the afore-discussed general and specific standards. It should be emphasized that the FDA is *not* being asked to re-screen, re-evaluate or re-test the aforesaid contraceptive drugs and devices but only to inform this Court if they *were* screened, evaluated and/or tested against the constitutional and statutory standards that the Court upholds in this decision. Thus, this will not take an inordinate amount of time to do considering that the files should be readily available with the FDA. This information will allow the Court to take immediate remedial action in order to protect and defend the life of the unborn from conception/fertilization, if the circumstances warrant. That is, if the contraceptive drugs or devices *were not* screened, evaluated and/or tested against the constitutional and statutory standards that (lie Court upholds in this decision, then it would be necessary to suspend their availability in the market, as a precautionary measure, in order to protect the right to life of the unborn *pending* the proper screening, evaluation and/or testing through the afore-discussed rules of procedure that the FDA is directed to issue..

It should be noted that Section 7.05 of the IRR *effectively* and *impliedly* mandates that these existing drugs and devices be screened, evaluated and/or tested *again* by the FDA against the standard or definition of abortifacient under Section 4(a) of the RFI Law. But the serious flaw in this procedure is that, in the meantime, the aforesaid drugs and devices shall remain available in the market pending the FDA's certification, to wit:

> **Section 7.05** *Drugs, Supplies, and Products with Existing Certificates of Product Registration.* Upon the effectivity of these Rules, all reproductive health care drugs, supplies, and products that have existing Certificates of Product Registration (CPRs).from the FDA shall be provided certifications stating that they do not cause abortion when taken in dosages for their approved indications.

Thus, if such drugs and devices, are later determined by the FDA to be an abortifacient under the standard laid down in the Constitution, as adopted under the RFI Law, then the loss or destruction of many unborn may have already resulted or taken place. As previously noted, the proper course of action is to immediately determine if they were screened, evaluated and/or tested against the afore-discussed general and specific constitutional and statutory standards. And, if not, to immediately suspend their availability in the market, as a precautionary measure, in order to safeguard the right to life of the unborn pending the proper screening, evaluation and/or testing through the afore-discussed rules of procedure that the FDA is directed to issue.

The life of the unborn should not be placed at risk any minute longer.

The DOH in coordination with all concerned government agencies should be directed to formulate the rules and regulations or guidelines that will govern the purchase and distribution/ dispensation of the product or supply which will be covered by the FDA's certification, under Section 9 of the Mi Law, that said product and supply is made available on the condition that it is not to be used as an abortifacient.

Section 9 of the RH Law states—

> SEC. 9. *The Philippine National Drug Formulary System and Family Planning Supplies*. - The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, **any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.**
>
> These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: *Provided, further,* That the foregoing offices shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent. (Emphasis supplied)

Preliminarily, the necessity of imposing proper rules of procedure, which sufficiently safeguards the right to life of the unborn, in the FDA's determination of what will be considered allowable contraceptive drugs and devices upon implementation of the RH Law, can be better appreciated if viewed within the context of Section 9 of the RH Law, as afore-quoted. Once the FDA approves contraceptive drugs and devices like hormonal contraceptives, intrauterine devices, injectables and other family planning products and supplies, they will be included in the Essential Drugs List (EDL). As manifested by the Solicitor General, only drugs and medicines found in the EDL/Philippine National Drug Formulary System (PNDFS) may be dispensed, (whether for free or for a reduced amount) by public health care facilities.[38] *These contraceptive drugs and devices, thus, become widely and easily accessible to the public.* In fact, the IRR devolves the distribution of these contraceptives up to the *barangay* level with the DOH as the lead agency tasked, with its procurement and distribution. Thus, an erroneous determination by the FDA has an *immediate* and *widespread* impact on the right to life of the unborn.

However, there is another even more crucial aspect in the implementation of the Rli Law which has *far* greater impact on the right to life of the unborn than the FDA's determination of what are allowable contraceptives. It is found in the *proviso* of Section 9 which states "any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient." In other words, under this section, products and supplies (hereinafter "subject products and supplies") which are abortifacients (or have abortifacient properties) will also be included in the EDL *provided* that 'these products and. supplies will not be used as abortifacients as certified by the FDA.

I share the view of the *ponencia* that the aforesaid certification is empty and absurd. Such certification cannot guarantee that the subject products and supplies will not be used as abortifacients. The ponencia modifies the phrase from "it is not to be used" to "it

cannot be used" in order to protect the right to life of the unborn.

With due respect, I am of the view that the change in wording will not alter the result. The certification is of limited value. Even with the change in wording, there will be no guarantee that the subject products and. supplies will not be used as abortifacients. I submit that the proper area that should be strictly scrutinized is the implementing rules and regulations of Section 9 relative to the purchase and distribution of the subject products and supplies.

But before going to that, I find it necessary to discuss the rationale of this *proviso* in Section 9. The Senate Journal of October 8, 2012 summarizes the discussions leading to its final version, *viz*:

> On page 9, line 8 of the bill, after the word "PRACTICE" and the period (.), Senator Lacson proposed the insertion of a new sentence to read: FOR THE PURPOSE OF THIS ACT, ANY FAMILY PLANNING PRODUCT OR SUPPLY INCLUDED OR TO BE INCLUDED IN THE ESSENTIAL DRUG LIST MUST HAVE A CERTIFICATION FROM THE FOOD AND DRUG ADMINISTRATION (FDA) OF THE PHILIPPINES.THAT SAID PRODUCT AND SUPPLY HAS NO ABORTIFACIENT OR ABORTICIDE EFFECT.
>
> Senator Cayetano (P) expressed willingness to accept the amendment, subject to style, but she explained that there are certain medications which are effectively abortifacient but are not used for such purpose. These medications, she explained, cannot be simply banned because they are necessary drugs for purposes for which they were introduced and are prescribed **under very strict guidelines by a medical practitioner.**
>
> She suggested that an amendment be made to require the issuance of a certification that such drugs should be used for their intended medical purpose and not as abortifacient.
>
> Citing another example, Senator Cayetano (P) said that a particular drug is being prescribed to teenagers to treat the breakout of acne, provided an assurance is given that the patient is not pregnant or otherwise sexually active because it could cause severe physical abnormality to a fetus like being born without limbs. She noted that the said drug could not be banned because it has to be used for an intended purpose.
>
> Senator Lacson expressed apprehension that a woman who has acne and wishes to have an abortion may take advantage of the essential drug being provided by the, government to avail of its abortive side effect.
>
> Senator Cayetano (P) agreed with Senator Lacson that the said essential, medicine should not be used as abortifacients. However, she said that the medical consultants present in the gallery point out that a number of drugs with similar effect are actually available in the market and, banning these drugs could pose a great danger as they are being prescribed for a particular purpose. In addition to the literature that come with the drugs, she suggested that stronger warnings be made by health professionals that in no case shall these drugs be prescribed and made available as abortifacients.
>
> Upon query of Senator Lacson, Senator Cayetano (P) replied that these drugs that are prescribed to teat very serious medical conditions have been available in the market for the longest time such that withdrawing them from the market would be very detrimental to llie health system in (lie country. For instance, she said that *Oxylocin* is used to induce labor in conditions necessitating that the baby be delivered right away, like in cases when llie baby's umbilical cord has encircled his/her neck. She said that *Oxylocin* is actually intended to save a baby's life: thus, it should not be given to a two-month pregnant woman. She reiterated that withdrawing an essential medicine such as *Oxylocin* from the market would totally debilitate the maternity health care system.
>
> Asked how it could be ensured that such and similar drugs would not be used as abortifacients. Senator Cayetano (P) replied that a health professional who prescribes a drug such as *Oxylocin* to a woman who is in her first trimester of pregnancy is clearly prescribing it as an abortifacient and should therefore be held liable under the Revised Penal Code.
>
> Asked whether the government would be providing drugs such as Oxylocin Senator Cayetano (P) said that health care providers involved in childbirth have expressed their desire to have access to such drugs because these are essential medicines that could actually improve maternal mortality rate since it could enable them to immediately save the life of a child. However, she underscored the importance of ensuring **that the FDA would be very strict on its use.**
>
> At this juncture, Senator Sotto asked Senator Lacson what his particular proposed amendment would be, Senator Lacson replied that he would like to insert a provision, subject to style, that would ensure that the drugs cannot be used as abortifacients but they can be used for the purpose for which they were introduced in (lie market. Senator Sotto suggested that the Body be presented with the actual text of the amendment before it approves it. (Emphasis supplied)

As can be seen, the purpose of including the subject products and supplies in the EDL is their importance in treating certain diseases and/or their use as life-saving drugs. Yet, at the same time, these products and supplies can be used as abortifacients.

The inclusion of these products and supplies in the EDL, under Section 9 of the RH Law, will necessarily present numerous challenges. On the one hand, the State has a substantial interest in making available the subject products and supplies in order to treat various diseases and, in some instances, these products and supplies are necessary to save lives. On the other hand, by allowing the subject products and supplies to be included in the EDL, the right to life of the unborn may be jeopardized if access to these products and supplies are easily obtained by unscrupulous individuals.

The answer to (lie problem was touched on during the legislative deliberations. It lies in the strict regulation of these products and supplies. The IRR states:

> **Section 8.03** *Review of Existing Guidelines.* Within thirty (30) days from the effectivity of these Rules, the DOH shall review its existing guidelines for the procurement and distribution of reproductive health supplies and products including life-saving drugs, and shall issue new guidelines that are consistent with, these Rules.
>
> xxxx
>
> **Section 8.08** *Logistics Management.* The DOH shall be responsible for the transportation, storage, and distribution of reproductive health products and. supplies to their respective destinations. Upon delivery to the local government units, the respective provincial, city, and/or municipal health officers shall assume responsibility for the supplies and shall ensure their prompt, continuous, and equitable distribution to all the applicable hospitals, health centers, or clinics within their respective areas of responsibility, taking into consideration existing storage facilities and other factors that may hinder the effective distribution/use of the said supplies.
>
> The DOH shall designate a regional officer to oversee the supply chain management of reproductive health supplies and/or health products in his or her respective area, as assigned by the DOH. The officer shall promote speedy and efficient delivery of supplies, with the end goal of expedited distribution of quality-checked health products to the local government units. Towards this end, innovations on logistics and supply management, such as direct delivery of goods to the points of distribution, consistent with the intent and scope of these Rules shall be encouraged.
>
> *Provided, That* where practicable, the DOH or LGUs may engage civil society organizations or private sector distributors to accomplish the intent of this provision subject to the provisions of applicable rules and regulations.
>
> Within sixty (60) days from the effectivity of these Rules, the DOH shall issue guidelines for the implementation of this provision.
>
> **Section. 8.09** *LGU-initiated Procurement.* An LGU may implement its own procurement, distribution and monitoring program consistent with these Rules and the guidelines of the DOH.

Clearly, then, the primary responsibility for the regulation of the subject products and supplies lies with the DOIT. It is not certain whether the DOH has issued the rules and regulations relative to the purchase and distribution of these products and supplies. The Temporary Restraining Order (TRO) issued by this Court may have pre-empted the issuance of the subject guidelines relative to the purchase and distribution of these products and supplies.

But, again, pursuant to the expanded jurisdiction of this Court and as a penumbra of its power to issue rules for the protection and enforcement of the right to life of the unborn as well as the exceptional need to protect such life, the Court can require that, in the promulgation by the DOH of the subject rules and regulations or guidelines, certain minimum requirements of due process shall be followed.

I find that, under these premises, publication, notice and hearing should precede the issuance of the rules and regulations or guidelines which will govern the purchase and distribution of the subject products and supplies. In other words, there should be public hearings and/or consultations. The Solicitor General should be mandated to represent the unborn and the State's interest in the protection of the life of the unborn in these proceedings before the DOH. And interested parties should be allowed to intervene.

Concededly, the DOH shall issue the rules and regulations or guidelines pursuant to its quasi-legislative (not quasi-judicial) powers, however, again, mere is no obstacle to requiring that this rule-making process be subjected to a higher degree of due process, considering that the requirements of publication, notice and healing are mandated in, say, the issuance of tax regulations where the lesser right to property is involved. With far greater reason should publication, notice and hearing be mandated because the subject rules will ultimately impact the right to life of the unborn. Also, while the Court cannot order the DOH to submit the subject rules for the Court's appropriate action since it involves a quasi-legislative function, there is nothing to prevent an aggrieved party from challenging the subject rules upon its issuance, if the circumstances warrant, based on grave abuse of discretion under the Court's expanded jurisdiction.

The rules and regulations or guidelines should provide *sufficient detail* as to how die subject products and supplies will be purchased and distributed or dispensed: what these products and. supplies are, who shall be authorized to purchase them; who

shall be authorized to store them; who shall be authorized to distribute or dispense them; the limits of what can be distributed or dispensed by particular individuals or entities; how the distribution or dispensation shall be strictly regulated; how accountability shall be enforced; and so forth.

Admittedly, the formulation of the proper rules and regulations or guidelines will necessarily present numerous challenges. The possible difficulties were already brought out in the afore-cited legislative deliberations.

Take the example of the girl with acne. The drug that is needed to treat the acne is an abortifacient. Several challenges will face the regulator in this regard. If the drug is given to her by prescription, nothing will prevent the girl, upon purchasing the drug, to give such drug to her pregnant friend who intends to have an abortion. One option that the regulator has is to require that the drug be personally administered by her (the girl's) physician so that there is no danger that the drug could be misused by the girl. The regulator must weigh whether protection of the life of the unborn is greater than the inconvenience imposed on the girl of having to frequent the clinic of her physician so that the drug can be personally administered to her. Here, the answer is obvious although there may be other means of regulation that can achieve the same end. Or take the example of health workers being given life-saving drugs which may also be used as abortifacients. The regulator now faces the challenge of how to make sure that the health worker does not abuse the life-saving drugs that will be placed, in his or her control and possession. This would involve, among others, strict monitoring and inventory procedures.

I do not intend to provide definite answers to the challenges that will face regulators relative to the regulation of the subject products and supplies. My goal is a modest one: to point out the difficulty and complexity of the problem of regulating these products and supplies. This provides greater reason why a higher level of due process is necessary in the proceedings which will result to the issuance of the rules and regulations or guidelines relative to the purchase and distribution or dispensation of the subject products and supplies. For very easily, given the complexity or difficulty of the problem, of regulation, the interests of the unborn may be relegated to the sidelines.

In fine, the afore-discussed minimum due process requirements are the only meaningful way to give effect to the constitutional right to life of the unborn from conception/fertilization under the premises. It, is worth repeating, as elsewhere stated, that the unborn cannot represent itself in the DOH's rule-making process which will ultimately bear upon its very right to life. Without the utmost care, transparency and proper representation of the unborn in the DOH's proceedings, which will result to the issuance of rules and regulations or guidelines on the purchase and distribution of the subject products and supplies, it is not difficult to discern how easily the right to life of the unborn may be trampled upon.

Pending the issuance and publication of these rules by the DOIT, the TRO insofar as the *proviso* in Section 9 of the RIT Law, as implemented by Section 7.03 of the IRR, relative to the subject products and supplies, which are made available on the condition that they will not be used as an abortifacient, should remain in force.

OTHER ISSUES

With respect to the other constitutional issues raised in this case, I state my position in what follows— concurring in some, dissenting in others— relative to the results reached by *ponencia*:

2 - Right to Health

The *ponencia* ruled that the RH Law adequately protects the right to health.

While I agree that the right to health is not violated, 1 wish to address here in greater detail petitioners' claims.

Article II, Section 15 in relation to Article XIII, Sections 11 to 13 of the Constitution provides:

> Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.
>
> xxxx Health
>
> Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.
>
> Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems.
>
> Section 13. The State shall establish a special agency for disabled persons for rehabilitation, sell-development and self-reliance, and their integration into the mainstream of society.

The right to health is, thus, recognized as a fundamental right.

Petitioners argue that the contraceptives that will be made available under the RH Law have grave side-effects that will adversely affect the users, especially women, in violation of the right to health.

I find petitioners' argument unavailing.

While indeed the RH Law will make available contraceptives that may have harmful side-effects, it is necessary to remember that the law does not impose their use upon any person. Understandably, from petitioners' point of view, it would seem "irrational" for (1) a person to take contraceptives, which have known harmful side effects and, in the long term, even lead to premature death, and (2) the government to subsidize the same in order to prevent pregnancy or to properly space childbearing given that there are other safer means and methods of family planning. But the weighing of which value is superior to (lie other is a matter left to the individual's sound judgment and conscience. It is his or her choice; an axiom of liberty; an attribute of free will. Men and women are free to make choices that harm themselves, like cigarette-smoking or excessive intake of alcohol, in order to attain a value that they perceive is more important than their own health and well-being. For as long as these choices are made freely (and do not harm the unborn from conception/fertilization insofar as this case is concerned), the State cannot intervene beyond ensuring that, the choices are well-informed absent a clear and unequivocal constitutional or statutory[40] command permitting it to do so.

Under the RH Law, there is nothing to suggest that the contraceptives will be made available without properly informing the target users of their possible harmful side effects. The law itself mandates complete information-dissemination and severely penalizes deliberate misinformation. Section 19(c) of the RH Law in relation to Sections 7.07 to 7.11 of the IRR cover this concern, *viz*:

> SEC. 19. *Duties and Responsibilities*, -xxx
>
> (c) The FDA shall issue strict guidelines with respect to the use of contraceptives, taking into consideration the side effects or oilier harmful effects of their use.
>
> **Section 7.07** *Technical Requirements for Family Planning Products.* Technical requirements for applications for product registration shall include a product insert or information leaflet for the consumers and health care providers. Appropriate information for the consumers, as determined by the FDA, shall be written in Filipino and/or local languages, as appropriate. The text or wording shall be in layman's terms. Graphics shall be used as appropriate for emphasis or guidance of the consumer using the product: *Provided, That* highly technical information such as medical terminology may be retained in its English version.
>
> At a minimum, the information on the insert or leaflet for consumers or health professional/worker shall include the name of the product, pharmacological category (when applicable), use or indication, proper use, contraindications and any precaution or health warning, and possible side effects and potential, health risks. Side effects, adverse effects and other possible health effects shall be clearly described.
>
> Within thirty (30) days from the effectivity of these Rules, the FDA shall develop guidelines for the implementation of this provision.
>
> **Section 7.08** *Provision of Product Information.* The FDA shall provide the public access to information regarding a registered reproductive health product. Among others, the FDA shall post in its website all approved reproductive health products (generic and branded) with all relevant information relevant to proper use, safety and effectiveness of the product, including possible side effects and adverse reactions or events. As appropriate, the FDA shall issue an advisory to inform the consumers about relevant developments regarding these products.
>
> **Section 7.09** *Post-Marketing Surveillance*. All reproductive health products shall be subjected to Post-Marketing Surveillance (PMS) in the country. The PMS shall include, but not be limited to: examining the health risk to the patient, and the risk of pregnancy because of contraceptive failure.
>
> The FDA shall have a sub-unit dedicated to reproductive health products under the Adverse Drug Reaction Unit who will monitor and act on any adverse reaction or event reported by consumers and health professionals or workers. The system for reporting adverse drug reactions/events shall include online reporting at the FDA and DOH website, along with established reporting mechanisms, among others.
>
> Companies with registered products shall be required to have a Post-Marketing Surveillance department, division, section, unit or group mat will monitor and investigate all health-related reactions or risks, or failure of the product to prevent pregnancy.
>
> **Section 7.10** *Product Monitoring.* To ensure the stability, safety, and efficacy of reproductive health products, (he FDA shall oversee the provider and/or distributor's compliance with proper distribution, storage, and handling protocols. Tliis shall be done in coordination with private or public reproductive health programs, and the company providing the supplies. The FDA inspectors shall inspect outlets for proper storage and handling of products and

supplies, and act on complaints in the field in coordination with the office of the Deputy Director General for Field Office.

Section 7.11 *Renewal of Product Registration.* In the renewal of product registration of reproductive health products, the FDA shall consider, among others, the following: the Adverse Drug Reaction / Adverse Event Reports, PMS reports, and studies on the safety and effectiveness conducted by the PMS unit of the product company.

Section 7.12 *Denial or Revocation of Product Registration.* After the careful evaluation of PMS data and other supporting evidence, the FDA shall deny or revoke the registration of reproductive health, products that are ineffective or have undesired side effects that may be found during testing, clinical trials and their general use.

We must, thus, reasonably presume that the health service provider will adequately inform the potential users of the contraceptives as to its possible harmful side effects. In any event, petitioners may come before the courts, at the proper time, if, in the implementation of the law, the right to health of the users of the contraceptives are not properly protected because they are given inaccurate information on the contraceptives' possible harmful effects.

3 - Freedom of Religion
3.a- Establishment Clause

I agree with the *ponencia* that the RH Law does not violate the Establishment Clause for the reasons stated in the *ponencia.*

3.b- Free Exercise Clause vis-a-vis
the Duty to Inform [Section 23(a)(l)l and
the Duty to Refer fSection 23(a)(3)|

I shall jointly discuss the constitutional validity of the duty to inform and duty to refer under the RH Law because they are intricately related to each other.

The *ponencia* ruled that the duty to inform and duty to refer imposed on the conscientious objector is unconstitutional for being violative of the Free Exercise of Religion Clause, to wit:

Resultantly, the Court finds **no compelling state interest** which would limit the free exercise clause of the **conscientious objectors**, however few in number. Only the prevention of an immediate and grave danger to the security and welfare of the community can justify the infringement of religious freedom. If the government fails to show the seriousness and immediacy of the threat, State intrusion is constitutionally unacceptable.

xxxx

Apparently, in these cases, there is **no immediate danger to the life or health** of an individual in the perceived scenario of the subject provisions. After all, a couple who plans the timing, number and spacing of the birth of their children refers to a future event that is contingent on whether or not the mother decides to adopt or use the information, product, method or supply given to her or whether she decides to become pregnant at all. On the other hand, the burden placed upon those who object to contraceptive use is immediate and occurs the moment a patient seeks consultation on reproductive health matters.

Moreover, granting that a compelling interest exists to justify the infringement of the conscientious objector's religious freedom, the respondent have failed to demonstrate "the gravest abuses, endangering paramount interests" which could limit or override a person's fundamental right to religious freedom. Also, the respondents has not presented any government effort exerted to show that the means it seeks to achieve its legitimate state objective is the **least intrusive means**. Other than the assertion that the act of referring would only be momentary, considering that the act of referral by conscientious objector is the very action being contested as violative of religious freedom, it behooves the respondents to demonstrate that no other means can be undertaken by the State to achieve its objective without violating the rights of the conscientious objector. The health concerns of women may still be addressed by other practitioners who may perform reproductive health-related procedures with open willingness and motivation. Suffice it to say, a person who is forced to perform an act in utter reluctance deserves the protection of the Court as the last vanguard of constitutional freedoms.

x x x x

The Court need not belabor the issue of whether the right to be exempt from being obligated to render reproductive health service and modern family planning methods, includes exemption from being obligated to give reproductive health .information and to render reproductive health procedures. Clearly, subject to the qualifications and exemptions earlier discussed, the right to be exempt from being obligated to render reproductive health service and modern family planning methods, **necessarily includes exemption** from being obligated to give reproductive health information and to render reproductive health procedures. The terms "service" and "methods" are broad enough to include the

providing of information and the rendering of medical procedures.[41]

I agree that the duty to refer, under pain of penal liability, placed on the conscientious objector is unconstitutional, however, I find that the conscientious objector's duty to inform is constitutional.

To place the Free Exercise of Religion Clause challenge in its proper context, it is necessary to distinguish two key concepts in the RH Law: (1) the duty to inform, and (2) the duty to refer.

The main provisions[42] on the duty to inform and duty to refer vis-a-vis the conscientious objector is found in Section 23(a)(l) in relation to 23(a)(3) of the RH Law, *viz*:

> SEC. 23. *Prohibited Acts*. - The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> (1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;
>
> x x x x
>
> (3) Refuse to extend quality health care services and information on account of the person's rnaritf.il status, gender, age, religious convictions, personal circumstances, or nature of work: *Provided,* That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible: *Provided, further,* That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal, of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases;

The duty to inform is embodied in the above-quoted Section 23(a)(l), which penalizes a public or private health care service provider for: (1) knowingly withholding information or restricting the dissemination of information, and/or (2) intentionally providing incorrect information; where "information" pertains to the programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods.

This provision, thus, seeks to ensure that all persons, who are qualified to avail of the benefits provided by the law, shall be given *complete* and *correct* information on the reproductive health programs and services of the government under the RH Law. It does not provide any exception to the duty to inform. Thus, a conscientious objector is mandated to provide complete and correct information even if this will include information on artificial contraceptives to which he or she objects to on religious grounds. Otherwise, he or she shall suffer the penal liability under the law.

The duty to refer, on the other hand, is provided in the *proviso* of Section 23(a)(3), which is likewise quoted above. This provision penalizes a public or private health care service provider for refusing to extend quality health care services and information on account of a person's marital status, gender, age, religious convictions, personal circumstances, or nature of work. However, it respects the right of the conscientious objector by permitting him or her to refuse to perform or provide the health care services, to which he or she objects to on religious or ethical grounds *provided* that he or she immediately refers the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible. As an exception to the exception, the conscientious objector cannot refuse to perform or provide such health care services if it involves an emergency condition or serious case under Republic Act No. 8344.[43]

It should be noted that the first sentence of Section 23(a)(3) of the RH Law refers to the refusal to extend quality health care services *and information*. However, the proviso in the aforesaid section, which imposes the duty to refer on the conscientious objector, is limited to referring the person to another health care service provider for purposes of availing health care services *only, not* health care services *and information*. The implication is that the conscientious objector is required to provide complete and correct information, and, in the event that the person asks for health care services that the conscientious objector objects to on religious or ethical grounds, the conscientious objector has the duty to refer the person to another health care service provider. This interpretation is in accord with the wording of Section 23(a)(l) of the RH Law, which provides no exceptions to the duty to inform.

It should be further noted, and not insignificantly, that Section 23(a)(3) of the RH Law does *not* state that the conscientious objector should refer the person to another health care service provider who *can* perform or provide the heath care services to which the conscientious objector objects to on religious or ethical grounds. Thus, a literal reading of this provision would permit the conscientious objector to refer the person to another health care service provider who is himself a conscientious objector. The IRR attempts to fill tliis ambiguity in Section 5.24(b) to (e) thereof, *viz*:

> **Section 5.24** *Public Skilled Health Professional as a Conscientious Objector.* In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skilled health professional shall comply with the following requirements:
>
> x x x x
>
> b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within (lie same facility;
>
> c) If within the same health facility, there is no other stalled health professional or volunteer willing' and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider mat is conveniently accessible in consideration of the client's travel arrangements and financial capacity;
>
> d) Written documentation of compliance with, the preceding requirements; and
>
> e) Other requirements as determined by the DOH.
>
> In the event where die public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay, x x x

This notwithstanding, and for purposes of the succeeding discussion on the Free Exercise of Religion Clause, the necessary premise is that the duty to refer involves referring the person to another health care service provider who will perform or provide the health care services to which the conscientious objector objects to on religious or ethical grounds. Though this is not explicitly stated in the RH Law, the law must be so reasonably construed given the policy of the law to provide universal access to modern methods of family planning.

As noted earlier, the duty to inform and the duty to refer are intricately related. The reason is that the duty to inform will normally *precede* the duty to refer. The process of availing reproductive health programs and services under the RH Law may be divided into two phases.

In the first phase, the person, who goes to a health service provider to inquire about the government's reproductive health programs and services under the RH Law, will be provided with complete and correct information thereon, including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods.

In the second phase, after receiving the information, the person would then ordinarily reach a decision on which reproductive health programs and services, if any, he or she wishes to avail. Once he or she makes a decision, he or she now asks the health service provider where and how he or she can avail of these programs or services.

From the point of view of the health care service provider, the first phase involves the transmission of information. Petitioners claim that this act of giving complete and correct information, including information on artificial contraceptives, imposes a burden on a conscientious objector, like a Catholic doctor, because he or she is required to give information on artificial contraceptives which he or she believes to be immoral or wrong.

I disagree.

Petitioners failed to convincingly show mat the act of giving complete and correct information, including those on artificial contraceptives, burdens a Catholic doctor's religious .beliefs. Note that the law merely requires the health service provider to give *complete* and *correct* information. Presumably this can even be done by simply giving the person a handout containing the list of the government's reproductive health programs and services under the RH Law. The valid secular purpose of the duty to inform is readily apparent and the State interest in ensuring complete and correct information is direct and substantial in order that the person may make an informed and free choice.

The law does not command the health service provider to endorse a particular family planning method but merely requires the presentation of complete and correct information so that the person can make an informed choice. A conscientious objector, like a Catholic doctor, is, thus, not compelled to endorse artificial contraceptives as the preferred family planning method. On its face, therefore, there appears to be no burden imposed on the conscientious objector under die duty to inform.

To my mind, to successfully claim that a conscientious objector, like a Catholic doctor, is burdened by the duty to inform, petitioners should have demonstrated that, for a Catholic doctor, the *mere mention* of artificial contraceptives (what they are and how they work) to the person is immoral under the tenets of the Catholic faith. In the case at bar, petitioners failed to carry this onus. Moreover, after providing the complete and correct information as mandated by the 'RH Law, there is nothing to prevent the conscientious objector, like a Catholic doctor, from speaking against artificial contraceptives on religious or ethical grounds because the RH Law cannot curtail freedom of speech; the Constitution is deemed written into the law.

For the foregoing reasons, I find, that petitioners failed to clearly show that the act of giving complete and. correct information on reproductive health programs and services under the RH Law burdens a conscientious objector's religious beliefs. Thus, I find that the duty to inform under Section 23(a)(l) of the RH Law is constitutional even with respect to the conscientious objector. In other words, the conscientious objector has the duty to inform under the aforesaid section.

I now turn to the duty to refer. As already mentioned, I reach an opposite result here. The central reason is that the second, phase involves a crucial distinguishing feature from the first phase. In the first phase, the person merely receives the complete and. correct information from the health service provider but, in the second case, the person now *decides to act on the information.* He or she makes a decision to avail of one or more of the government's reproductive health programs and services under the RH Law. In case the person seeks to avail of a program or service which the conscientious objector objects to on religious or ethical grounds, Section 23(a)(3) imposes on the conscientious objector the duty to refer the person to a health service provider who can perform or provide such program and service.

This is an entirely different scenario. The person has already made a decision and now seeks to accomplish, an act which the conscientious objector considers immoral or wrong on religious or ethical grounds. When the RH Law compels the conscientious objector to make such a referral, under pain of penal liability, the religious or ethical beliefs of the conscientious objector is clearly burdened because he or she is made to either (1) join in this intention or (2) aid in the accomplishment of this intention which he or she considers immoral or wrong.

To illustrate, a Catholic doctor, who objects to the use of artificial contraceptives, is compelled to refer a person who seeks such services to another health care service provider who will, in turn, perform or provide services related to artificial contraception. In such a case, the Catholic doctor is effectively commanded to either (1) join in the intention of the person to use artificial contraceptives or (2) aid in the accomplishment of this intention. From another perspective, the Catholic doctor may view the referral as an essential link in the chain of events which would lead to the availment of the person of such artificial contraceptives.

Consequently, in the above scenario, I am of the view that the religious or ethical beliefs of the conscientious objector are clearly burdened by the duty to refer, thus, calling for the application of the test enunciated in *Estrada v. Escritor*[44] to wit:

1. The sincerity and centrality of the religious belief and practice;

2. The State's compelling interest to override the conscientious objector's religious belief and practice; and

3. The means the State adopts in pursuing its interest is the least restrictive to the exercise of religious freedom.[45]

Anent the first test, insofar as the Catholic health service provider is concerned *vis-a-vis* the use of artificial contraceptives, I find that petitioners have met the sincerity and centrality test. The Catholic Church's teaching on the use of artificial contraceptives as immoral, evil or sin is of time immemorial and well documented. Its sincerity and centrality to the Catholic faith cannot be seriously doubted as a papal encyclical, *Humanae Vitae*, has even been principally devoted to re-stating or expressing the Catholic Church's teaching on artificial contraceptives, to wit:

> ***Faithfulness to Gad's Design***
>
> **13**. Men rightly observe that a conjugal act imposed on one's partner without regard to his or her condition or personal and reasonable wishes in matter, is no true act of love, and therefore offends the moral order in its particular application to the intimate relationship of husband and wife. If they further reflect, they must also recognize that an act of mutual love which impairs the capacity to transmit life which God the Creator, through specific laws, has built into it, frustrates His design which constitutes the norm of marriage, and contradicts (lie will of the Author of life. Hence to use this divine gift while depriving it even if only partially, of its meaning and purpose, is equally repugnant to the nature of man and of woman, and is consequently in opposition to the plan of God and His holy will. But to experience the gilt of married love while respecting the laws of conception is to acknowledge that one is not the master of the sources of life but rather the minister of the design established by the Creator. Just as man does not have unlimited dominion over his body in general, so also, and with more particular reason, he has no such dominion over his specifically sexual faculties, for these are concerned by their very nature with the generation of life, of which God is the source. "Human life is sacred—all men must recognize that fact," Our predecessor Pope John XXIII recalled. "From its very inception it reveals the creating hand of God." (13)
>
> **Unlawful Birth Control Methods**
>
> **14**. Therefore We base Our words on the first principles of a human and Christian doctrine of marriage when We are obliged once more to declare mat (lie direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children. (14) Equally to be condemned, as the magisterium of the Church has affirmed on many occasions, is

> direct sterilization, whether of the man or of the woman, whether permanent or temporary. (15)
>
> Similarly excluded is any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation— whether as an end or as a means. (16)
>
> Neither is it valid to argue, as a justification for sexual intercourse which is deliberately contraceptive, that a lesser evil is to be preferred to a greater one, or mat such intercourse would merge with procreative acts of past and future to form a single entity, and so be qualified by exactly the same moral goodness as these. Though it is true mat sometimes it is lawful to tolerate a lesser moral evil in order to avoid a greater evil or in order to promote a greater good," it is never lawful, even for the gravest reasons, to do evil that good may come of it (18)—in other words, to intend directly something which of its very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote the welfare of an individual, of a family or of society in general. Consequently, it is a serious error to think that a whole married life of otherwise normal relations can justify sexual intercourse which is deliberately contraceptive and so intrinsically wrong.[46]

Because petitioners have met the first test, the burden shifts to the government to meet the last two tests in order for the constitutional validity of the duty to refer to pass muster.

Anent the second test, the government failed to establish a compelling State interest to justify the duty to refer under pain of penalty. The purpose of the duty to refer is to facilitate the availment of the government's reproductive health programs and services. That is, it is logically more convenient that, after receiving complete and correct information on the government's reproductive health programs and services from a conscientious objector, the person should be readily referred to another health service provider who can perform or provide the chosen program or service to which the conscientious objector objects to on religious grounds.

The primary State interest, therefore, that the duty to refer serves is the facility of availing such programs and services or, in short, the person's convenience. Put another way, if there were no duty to refer and, thus, the conscientious objector is allowed to say to the person, "Sorry, I do not know of and/or cannot refer you to such a health service provider because I would be helping you to accomplish something that I consider immoral or wrong," then, at most, the person suffers the inconvenience of having to look for the proper health service provider, on his or her own, who can provide or perform the chosen program or service. Plainly, 'the person's convenience cannot override the conscientious objector's religious freedom; a right founded on respect for the inviolability of the human conscience.[47]

Anent the third test, which is intimately related to the second test, there are clearly other means to achieve the purpose of the duty to refer. Upon the implementation of the RH Law, through Sections 5.22,48 5.23,49 and 5.24[50] of the IRR, the government will already be able to identify both conscientious objectors and non-conscientious objectors. It can, therefore, map out an effective strategy to inform all potential patients or target beneficiaries where they can avail of the *complete* reproductive health programs and services under the RH Law (which refer simply to the identity and location of all non-conscientious objector health service providers). This is well-within the State's administrative and logistical capability given its enormous machinery and the mandate of Section 20 of the RH Law, which provides that:

> "SEC. 20. Public Awareness. - The |)OH and the LGUs shall initiate and sustain a heightened nationwide miltimedia-carnpaign to raise the level of public awareness on the protection and promotion of reproductive health and rights including, but not limited to, maternal health and nutrition, family planning and responsible parenthood information and services, adolescent and youth reproductive health, guidance and counseling and other elements of reproductive health care 'under Section 4(q).
>
> Education and information materials to be developed and disseminated to ensure their effectiveness and for this purpose shall be reviewed regularly relevance."

The information, then, as to which I health service provider is not a conscientious objector can easily be disseminated through the information campaign of the government without having to burden the conscientious objector with the duty to refer.

Based on the foregoing, the duty to refer fails to meet the criteria set in *Estrada v. Escrilor*.[51] Thus, it is unconstitutional.

Before closing the discussion on the duty to inform and the duty to refer, I wish to highlight the preferred status that religious freedom occupies in the hierarchy of constitutional rights by way of analogy. Let us assume that the State promulgates a law which subsidizes the purchase of weapons due to rising criminality. The law requires store owners, in the business of selling such weapons, to fully inform their buyers of the available weapons subsidized by the government. A store owner is, thus, required to inform a buyer that the following are the government subsidized, weapons: knives and guns. The store owner would have no problem acceding to this duty to inform. But suppose, one day, a buyer comes to Ms store and says that he wants to buy a gun in order to kill or murder his neighbor. The store owner, assuming he acts in accordance with his conscience, would ordinarily refuse to sell the gun. If the law, however, requires the store owner to refer the buyer to another store where the buyer can avail of this gun, despite the latter's motive for buying the gun, would this not impose a burden on the conscience of the store owner?

To a non-believer, the matter of the duty to refer relative to, say, artificial contraceptives may seem too inconsequential to merit constitutional protection. But the Court cannot judge the truth or falsity of a religious belief nor the seriousness of the consequences that its violation brings upon the conscience of the believer. For to the believer, referring a person to a health service provider where the latter can avail of artificial contraceptives may be of the same or similar level as referring a person to a store owner where he can purchase a gun to kill or murder his neighbor. It constitutes a breach of his or her covenant relationship with his or her God, and, thus, affects his or her eternal destiny. That, precisely, is the province of the Free Exercise of Religion Clause. That the believer may not have to choose between his or her earthly freedom (imprisonment) and his or her eternal destination.

In view of the foregoing, I find that the duty to refer imposed on the conscientious objector under Sections 7 and 23(a)(3) of the RH Law is unconstitutional for violating the Free Exercise of Religion Clause. Consequently, the phrase, *"Provided, farther, That these hospitals shall immediately refer the person seeldng such care and services to another health facility which is conveniently accessible,"* in Section 7 and the phrase, *"however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible"* in Section 23(a)(3) of the RH Law should be declared void. Consequently, Sections 5.24(b) to (e) and 5.25 of the IRR, which implements me aforesaid provisions of the RH Law, are void.

In another vein, I agree with the *ponencia* that the last paragraph of Section 5.24 of the IRR is *ultra vires* because it effectively amends Section 4(n) in relation to Section 23(a)(3) of the RH Law.

Under Section 4(n) of the RH Law, a public health care service provider is defined as follows:

> SEC. 4. *Definition of Terms.* - For the purpose of this Act, the following terms shall be defined as follows:
>
> (n) *Public health care service provider* refers to: (1) public health care institution, which is duly licensed and accredited and devoted primarily to the maintenance and operation of facilities for health promotion, disease prevention, diagnosis, treatment and care of individuals suffering from illness, disease, injury, disability or deformity, or in need of obstetrical or other medical and nursing care; (2) public health care professional, who is a doctor of medicine, a nurse or a midwife; (3) public health worker engaged in the delivery of health care services; or (4) barangay health worker who has undergone training programs under any accredited government and NGO and who voluntarily renders primarily health care services in the community after having been accredited to function as such by the local health board in accordance with the guidelines promulgated by the Department of Health (DOH).

While last paragraph of Section 5.24 of the IRR states:

> *Provided, That* skilled health professionals such as provincial, city, or municipal health officer's, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of die RPRH Act and these Rules, **cannot be considered as conscientious objectors**. (Emphasis supplied)

The above-enumerated skilled health professionals fall within the definition of a "public health care service provider" under Section 4(n) of the RH Law. Under Section 23(a)(3) of the RH Law, *both,* public and private health service providers may invoke the right of a conscientious objector. The last paragraph of Section 5.24 of the IRR is, thus, void insofar as it deprives the skilled health professionals enumerated therein, from the right to conscientious objection.

I also agree with the *ponencia* mat the last paragraph of Section 5.24 of the IRR is unconstitutional for being violative of the Equal Protection Clause although I find that the proper standard of review is the strict scrutiny test.

The IRR effectively creates two classes with differential treatment with respect to the capacity to invoke the right of a conscientious objector: (1) skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RH Law and its IRR, and (2) skilled health professionals not belonging to (1). Those belonging to the first class cannot invoke the right of a conscientious objector while those in the second class are granted that right.

In our jurisdiction, equal protection analysis has generally followed the rational basis test coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law absent a clear and unequivocal showing of a breach, of the Constitution.[52] However, when the classification burdens a suspect class or impinges on fundamental rights, the proper standard of review is the strict scrutiny test.[53]

Under the strict scrutiny test, the government must show a compelling or overriding end to justify either: (1) the limitation on fundamental rights or (2) the implication of suspect classes.[54] The classification will only be upheld if it is shown to be suitably tailored to serve a compelling State interest.[55] Suspect classes include classifications based on race, nationality, alienage or

denominational preference while classifications impinging on fundamental rights include those affecting marriage, procreation, voting, speech and interstate travel.[56]

Here, the classification impinges on the fundamental right of free exercise of religion, as operationalized through the right of a conscientious objector, which the RH Law recognizes and respects. The government must, therefore, show that the differential treatment between .the first class and second class of skilled health professionals serves a compelling State interest.

I find that the State has failed to prove how curtailing the right of conscientious objection of those belonging to the first class will further a compelling State interest. One perceptible reason for depriving the right of conscientious objection to those belonging to the first class appears to be the fear that this will paralyze or substantially degrade the effective implementation of the RH Law considering that these skilled health professionals are employed in public health institutions and local government units.

This fear rests on at least two assumptions: (1) most, if not all, skilled health professionals belonging to the first class are conscientious objectors, and (2) the State is incapable of securing the services of an adequate number of skilled health professionals who are not conscientious objectors. Both assumptions have not been proven by the State. And, even if it were so proven, it must be recalled that the right of the conscientious objector is a limited one: he or she may refuse to perform or provide reproductive health services to which he or she objects to on religious grounds. In such a case, the solution is for the person to avail of such services elsewhere. Consequently, the State would now have to show that the inconvenience caused on the part of the person, who must secure such services elsewhere (which could be as near as the doctor in the next room or as far-flung as the doctor in another province or region) overrides the freedom of religion of conscientious objectors belonging to the first class. As earlier noted, it is self-evident that the person's convenience cannot override the freedom of religion of the conscientious objector; a constitutionally protected right predicated on respect for the inviolability of the human conscience. (Even if this inconvenience would entail, for example, added transportation costs, it cannot be seriously argued that one can place a monetary value on the inviolability of the human conscience.)

Hence, I find that the last paragraph of Section 5.24 of the IRR is unconstitutional on equal protection grounds.

3.c- Family Planning Seminars

I agree with the *ponencia*. that Section 15 of the RH Law mandating a family planning seminar as a condition for the issuance of a marriage license is constitutional for reasons stated in the *ponencia.*

4- The Family Planning And The Right To Privacy
4.a. Decision-making by the spouses

I agree with the *ponencia* that Section 23(a)(2)(i) of the RH Law is unconstitutional but for different reasons.

The *ponencia*, ruled that the aforesaid provision contravenes Article XV, Section 3 of the Constitution and the constitutional right to privacy of the spouses relative to the decision-making process on whether one spouse should undergo a reproductive health procedure like tubal ligation and vasectomy. According to the *ponencia*, the decision-making process on reproductive health procedures must involve both spouses, that is, the decision belongs exclusively to both spouses, in consonance with the right of the spouses to found a family. Otherwise, this will destroy family unity. Further, this process involves a private matter that the State cannot intrude into without violating the constitutional right to marital privacy. The spouses must, thus, be left alone to chart their own destiny.

Section 23(a)(2)(i) of the RH Law provides that:

> "SEC. 23. *Prohibited Acts*. - The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall;
>
> xxxx
>
> (2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal, age on the ground of lack of consent or authorization of the following persons in the following instances:
>
> (i) Spousal consent in case of married persons: Provided, That in case of disagreement, **the decision of the one undergoing the procedure shall prevail**; x x x (Emphasis supplied)

This provision contemplates a situation where the spouses are unable to agree if one of them should undergo a reproductive health procedure like tubal ligation or vasectomy. It does not dispense with consulting the other spouse but provides a mechanism to settle the disagreement, if one should arise.

Indeed, the decision-making process in this area is a delicate and private matter intimately related to the founding of a family. The matter should, thus, be decided by both spouses under the assumption that they will amicably settle their differences and

forthwith act in the best interest of the marriage and family. But, as in all relations between and among individuals, irreconcilable disagreements may arise. The law, therefore, steps in to break the *impasse.*

The law, however, settles the dispute by giving the spouse, who will undergo the procedure, the absolute and final authority to decide the matter. The rationale seems to be that the spouse, who will undergo the procedure, should ultimately make the decision since it involves his or her body.

Like the *ponencia*, I am of the view that this provision in the RH Law clearly violates Article II, Section 12 in relation to Article XV, Sections 1 and 3(1) of the Constitution, which are quoted hereunder:

> Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution, x x x
>
> xxxx
>
> Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development, x x x
>
> xxxx
>
> Section 3. The State shall defend:
>
> (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood; x x x

Taken together, these constitutional provisions are intended to, among others, prohibit the State from adopting measures which impair the solidarity of the Filipino family.57 In particular, Section 3(1) explicitly guarantees the right of the spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood. This necessarily refers to, among others, the number of children that the spouses will bring into this world.

The provision speaks of this right as properly belonging to *both* spouses. The right is, thus, conferred on both of them and they are to exercise this right jointly. Implicit in this provision is mat the spouses *equally* possess this right particularly when read in light of Article II, Section 1458 of the Constitution which enjoins the State to ensure the fundamental equality before the law of women and men.

Thus, the spouse, who will undergo the reproductive health procedure, cannot be given the absolute and final authority to decide this matter because it will destroy the solidarity of the family, in general, and do violence to the equal right of each spouse to found the family in accordance with their religious convictions and the demands of responsible parenthood, in particular.

My disagreement with the ruling of the *ponencia*, however, is that it falls on the other extreme. When the *ponencia* states that the aforesaid decision-making process must be settled through the spouses' mutual consent and that the State cannot intrude in such, process because of the right to marital privacy, the implicit result is that the other spouse, who refuses to give his or her consent, is given the absolute and final authority to decide this matter. In other words, the result reached by the, ponencia is merely the opposite of that under the RH Law. That is, the non-consenting spouse is effectively given the absolute and final authority in the decision-making process.

I find this result equally repugnant to the afore-discussed constitutional provisions.

To my mind, the State can intervene in marital rights and obligations when there are genuine and serious disagreements between the spouses. This is a basic postulate of our Constitution relative to marriage and family relations as well as our existing family laws and rules of procedure. The constitutional right to privacy does not apply in this situation because the conflict of rights and obligations is between one spouse and the other, and does not involve a dispute between the State and the spouses,

This view is consistent with the provisions of the Family Code on dispute resolution between spouses which preserves and adheres to the constitutional precept on the solidarity of the family and the right, belonging to both spouses, to found the family. State intervention, which provides the solution to the problem, involves calling upon the courts to ultimately settle the dispute in case of disagreement between the spouses. To illustrate, the Family Code explicitly provides how disagreements shall be settled in various marital and family relations' controversies, to wit:

> ARTICLE 69. The husband and wife shall fix the family domicile. **In case of disagreement, the court shall decide.**
>
> The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

xxxx

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

In case of disagreement, the court shall decide whether or not:

(1) The objection is proper, and

(2) Benefit has accrued to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of creditors who acted in good faith.

xxxx

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

xxxx

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

xxxx

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

While there appears to be no law prior to the RH Law *specifically* dealing with the decision-making process on undergoing reproductive health procedures by one spouse, there is no obstacle to the application of the above principle (i.e., "in case of disagreement, the court will decide") because such decision-making process is properly subsumed in the mass of marital rights and obligations, and the general principles governing them, provided in our Constitution and family laws and is, therefore, within the ambit of the judicial power of courts to settle actual controversies involving rights which are legally demandable and enforceable. The principle of "in case of disagreement, the court will decide" properly governs how conflicts involving marital rights and obligations shall be resolved, without giving to one spouse the absolute and final authority to resolve the conflict, and, thus, preserving the equal, right of the spouses to found the family and maintaining the solidarity of the family in consonance with the Constitution.

Of course, unlike most of the above-quoted Family Code provisions, neither the husband nor wife's decision in this particular situation can, in the meantime, prevail considering that the effects of the reproductive healtli procedures may be permanent or irreversible. Thus, the decision-making process on undergoing reproductive health procedures by one spouse requires the consent of both spouses but, in case of disagreement, the courts will decide.

The key principle is that no spouse has the absolute and final authority to decide this matter because it will run counter to the constitutional edict protecting the solidarity of the family and equally conferring the right to found the family on both spouses. Consequently, while I agree that Section 23(a)(2)(i) of the RH Law is unconstitutional, the declaration of unconstitutionality should not be construed as giving the non-consenting spouse the absolute and final authority in the decision-making process relative to undergoing a reproductive health procedure by one spouse. The proper state of the law and rules of procedure on the matter is that the decision shall require the consent of both spouses, and, in case of disagreement, the matter shall be brought before the courts for its just adjudication.

4.b. - The need of parental consent

I agree with the *ponencia* that the phrase, "except when the minor is already a parent or has had a miscarriage," in Section 7 of the RH Law is unconstitutional but for different reasons. This provision states, in part, that:

SEC. 7. *Access to Family Planning.* - x x x

No person shall be denied information find access to family planning services, whether natural or artificial: Provided, That minors will not be allowed access to modern methods of family planning without written consent from their

parents or guardian/s **except when the minor is already a parent or has had a miscarriage**. (Emphasis supplied)

Article II, Section 12 of the Constitution states, in part:

> Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution, x x x

The description of the family as a "basic" social institution is "an assertion that the family is anterior to the state and is not a creature of the state"[60] while the reference to the family as "autonomous" is "meant to protect the family against the instrumentalization by the state." This provision is, thus, a guarantee against unwarranted State intrusion on matters dealing with family life.

The subject of parental authority and responsibility is specifically dealt with in the last sentence of the above constitutional provision which reads:

> The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

As a natural right, parental, authority is recognized as an inherent right, not created by the State or decisions of the courts, but derives from the nature of the parental relationship. More important, as pertinent in this controversy, the present Constitution refers to such right as "primary" which "imports the assertion that the right of parents is superior to that of the state."[63]

Title IX of the Family Code is the principal governing law on parental authority. Chapter 3, Section 220 thereof provides:

> Chapters. Effect of Parental Authority Upon the Persons of Children
>
> ARTICLE 220, The parents and those exercising parental authority shall have with, respect to their unemancipated children or wards the following rights and duties:
>
> (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means:
>
> (2) To give them love and affection, advice and counsel, companionship and understanding;
>
> (3) To provide them with moral, and spiritual guidance, inculcate in them honesty, integrity, sell-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
>
> (4) To enhance, protect, preserve and maintain their physical, and mental health at all times;
>
> (5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
>
> (6) To represent them in all matters affecting their interests;
>
> (7) To demand from them respect and obedience;
>
> (8) To impose discipline on them as may be required under the circumstances; and
>
> (9) To perform such other duties as are imposed by law upon parents and guardians.

As can be seen from the foregoing, the constitutional and statutory *recognition* of parental authority (for as afore-stated such authority precedes the State and laws) is broad and indivisible, full and complete in *all* matters relating to the rearing and care of minors in order to promote their welfare and best interest. Further, the deprivation or loss of parental: authority, which is governed by the judicial process, crises only in exceptional cases when the best interest of the minor so requires. There is, therefore, an inherent public policy recognizing the necessity of keeping parental authority intact and shielding it from undue State intrusion or interference.

Viewed in this light, Section 7 of the RH Law is a radical departure from, the afore-discussed public policy as embodied in our Constitution and family laws. The decision on access to modern methods of family planning by minors evidently falls within the

ambit of parental authority, in general, and Article 220 of the Family Code, in particular, which recognizes the parents' right and duty to provide advice and counsel, moral and spiritual guidance, as well as to protect, preserve and maintain the minor's physical and mental health. It cannot be doubted that the use of modern methods of family planning by a minor will greatly impact his or her physical, mental, moral, social and spiritual life. And yet Section 7 would, exempt such a decision by a minor, who is already a parent or has had a miscarriage, from parental authority by allowing access to modern methods of family planning without parental consent.

I find that this *proviso* in the RH Law is unconstitutional in view of the nature and scope of parental authority.

Because parental authority is a constitutionally recognized natural and primary right of the parents, with emphasis on "primary" as giving parents a superior right over the State, the State cannot carve out an exception to such authority without showing or providing a sufficiently compelling State interest to do so. A limited but blanket exception from parental authority, such as that found in Section 7 of the RH Law, will undoubtedly destroy the solidarity of the family as well as foster disrespect and disobedience on the part of the minor. It disrupts the natural state of parent-child relationship and is wholly inconsistent with the purpose and essence of parental authority granting the parents the natural and primary right in *all* matters relating to the rearing and care of the minor in, order to safeguard Ms or her well-being.

In the case at bar, the State failed to prove such sufficiently compelling State interest. The rationale of Section 7 seems to be mat a minor, who is already a parent or has had a miscarriage, by reason of such fact alone, *automatically* and *definitively* attains a level of maturity that demands that he or she no longer be placed under the parental authority of his or her parents relative to decisions involving access to modern methods of family planning. However, there is no basis to reach this conclusion. The State has provided none. And the opposite is probably more true; in that the early parenthood or miscarriage of the minor is a sign of immaturity which, therefore, necessitates *greater* parental guidance, supervision and support for the minor, including decisions relative to access to modern methods of family planning. This is especially true in the case of the minor who faces the early prospect of raising a child or children.

Further, if the purpose of Section 7 of the RH Law is to uphold the interest of the minor, who is already a parent or has had a miscarriage, from Ms or her parents who unjustifiably withholds consent for him or her to have access to modern methods of family planning, there are less intrusive means to achieve tMs purpose considering that a judicial remedy, where the courts can look into the particular circumstances of a case and decide thereon based on the best interest of the minor, may be availed of by the minor.

The State has, therefore, not only failed to prove a sufficiently compelling State interest to carve out an exception to the constitutionally recognized parental authority of parents but also failed to prove that the apparent goal of this provision cannot be attained by less intrusive means. Hence, Section 7 of the RH Law, particularly the phrase, "except when the minor is already a parent or has had a miscarriage," is unconstitutional for violating the natural and primary right of parents in rearing their minor children as recognized under Article II, Section 12 of the Constitution.

Additionally, the distinction based on the predicament of the minor, as already being a parent or has had a miscarriage, vis-a-vis the requirement of parental consent on matters relating to access to modern methods of family planning is unconstitutional on equal protection grounds. A parallel standard of review leads to the same end result.

The *proviso* in Section 7 of the RH Law effectively creates two groups with varying treatments: (1) minors who are already parents or have had a miscarriage, and (2) minors who are not parents or have not had a miscarriage. The first group is exempt from parental consent while the second is not.

For convenience, I reproduce below the baseline principles on equal protection analysis which I utilized in a previous section:

> In our jurisdiction, equal protection analysis has generally followed the rational basis test coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law absent a clear and unequivocal showing of a breach of the Constitution. However, when the classification burdens a suspect: class or impinges on fundamental rights, the proper standard of review is the strict scrutiny test.
>
> Under the strict scrutiny test, the government must show a compelling or overriding end to justify (1) the limitation on fundamental rights or (2) the implication of suspect classes. The classification will only be upheld if it is shown to be suitably tailored to serve a compelling State interest. Suspect classes include classifications based on race or nationality while classifications impinging on fundamental rights include those affecting marriage, procreation, voting, speech and interstate travel.

As stated earlier, the fundamental right involving the parental authority of pcirents over their minor children is unduly limited by the *proviso* in Section 7 of the RH Law, thus, calling for the application of the strict scrutiny test. The government must show mat a compelling State interest justifies the curtailment of parental authority of parents whose minor children, belong to the first group (*i.e*., minors who are already parents or have had a miscarriage) vis-a-vis parents whose minor children belong to the second group (*i.e.*, minors who are not parents or have not had a miscarriage). However, for reasons already discussed as to the maturity level of such group of minors and the apparent purpose of the subject legal provision, the government has failed to show

such compelling State interest. Hence, the phrase "except when the minor is already a parent or has had a miscarriage" in Section 7 of the RH Law is, likewise, unconstitutional on equal protection grounds.

4.c- Access to information

I agree with the *ponencia* that there is nothing unconstitutional about the capacity of a minor to access information, on family planning services under Section 7 of the RH Law for the reasons stated in the *ponencia*. hi addition, for practical reasons, the State or parents of the minor cannot prevent or restrict access to such information considering that they will be readily available on various platforms of media, if they are not already available at present It is only when the minor decides to act on the information by seeking access to the family planning services themselves that parental authority cannot be dispensed with (as discussed in a previous section).

5- Age-And Pevelopment-Appropritate Reproductive Health Education

I agree with the *ponencia* that the constitutional challenge against Section 14[64] of the RH Law is unavailing insofar as it is claimed to violate Article II, Section 12 of the Constitution on the natural and primary right and duty of parents to rear their children. Indeed, the State has a substantial interest in the education of the youth. Pursuant to its police power, the State may regulate the content of the matters taught to adolescents particularly with respect to reproductive health. education in order to, among others, propagate proper attitudes and behavior relative to human sexuality and sexual relations as well as properly prepare the young for marriage and family life. The topics to be covered by the curriculum include values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible. parenthood. The curriculum is, thus, intended to achieve valid secular objectives. As the *ponencia* aptly noted, the RH Law seeks to supplement, not supplant, the natural and primary right and duty of parents to rear their children.

Further, the constitutional challenge against Section 14 relative to the Free Exercise of Religion Clause is premature because, as noted by the *ponencia*, the Department of Education, Culture and Sports (DECS) has yet to formulate the curriculum on age- and development-appropriate reproductive health education. A Free Exercise of Religion Clause challenge would necessarily require the challenger to state what specific religious belief of his or hers is burdened by the subject curriculum as well as the specific content of the curriculum he or she objects to on religious grounds. Moreover, the proper party to mount such a challenge would be the student and/or his or her parents upon learning of the specific content of the curriculum and upon deciding what aspects of their religious beliefs are burdened. It would be inappropriate for the Court to speculate on these aspects of a potential Free Exercise of Religion Clause litigation involving a curriculum that has yet to be formulated by the DECS.

As to the equal protection challenge against Section 14, I agree with the *ponencia* that there are substantial distinctions between public and private educational institutions which justify the optional teaching of reproductive health education in private educational institutions. (By giving private educational institutions the option to adopt the curriculum to be formulated by the DECS, the RH Law effectively makes the teaching of reproductive health education in private educational institutions optional because the aforesaid institutions may completely discard such curriculum).

However, I disagree that the academic freedom of private educational institutions should be a basis of such justification. Article XTV, Section 5(2) of the Constitution provides mat, "[a]cademic freedom shall be enjoyed in all institutions of higher learning." Thus, only institutions of higher learning enjoy academic freedom. Considering that the students who will be subjected to reproductive health education are adolescents or "young people between the ages often (10) to nineteen (19) years who are in transition from childhood to adulthood,"[65] men this would presumably be taught in elementary and high schools which are not covered by academic freedom.

Nonetheless, I agree with the *ponencia* that, by effectively decreeing optional teaching of reproductive health education in private educational institutions, the RH Law seeks to respect the religious belief system of the aforesaid institutions. I find this to be a reasonable basis for the differential treatment between public and private educational institutions.

As previously discussed, the general approach in resolving equal protection challenges in our- jurisdiction is to utilize the rational basis test. Here, the classification between public and private educational institutions neither contains a suspect classification nor impinges on a fundamental right, thus, the rational basis test is *apropos*.[66] In *British American Tobacco v. Sec. Camacho,*[67] we explained that -

> Under this test, a legislative classification, to survive an equal protection challenge, must be shown to rationally further a legitimate state interest. The classifications must be reasonable and rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Since every law has in its favor the presumption of constitutionality, the burden of proof is on the one attacking the constitutionality of the law to prove beyond reasonable doubt that the legislative classification is without rational basis. The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there.is no conceivable basis which might support it.[68]

Noticeably, the RH Law is replete with provisions respecting the religious freedoms of individuals. In fact, one of its central and guiding principles is free and informed choice, thus, negating the imposition of any family planning method on an individual who objects on religious grounds. The same principle appears to have been carried over relative to the teaching of reproductive health education in private educational institutions. Congress may have legitimately concluded that the State interests in societal peace, tolerance or benevolent-neutrality accommodation, as the case may be, vis-a-vis the various religious belief systems of private educational institutions in our nation will be better served by making the teaching of reproductive health education (which may touch on or impact delicate or sensitive religious beliefs) as merely optional in such institutions. We can take judicial notice of the fact that majority of the private educational institutions in our nation were established and are run by religious groups or sects.

The classification in Section 14 of the RH Law, thus, rests on substantial distinctions and rationally furthers a legitimate State interest. It seeks to further no less than the constitutional principle on the separation of State and Church as well as the Free Exercise of Religion Clause. In fine, it is not for this Court to look into the wisdom of this legislative classification but only to determine its rational basis. For the foregoing reasons, I find that the differential treatment between public and private educational institutions in the law passes the rational basis test and is, thus, constitutional insofar as the equal protection challenge is concerned.

6- Due Process and Free Speech Clause

I agree with the *ponencia* that the void for vagueness doctrine is inapplicable to the challenged portions of the RH Law for reasons stated in the *ponencia.*

However, I find it necessary to discuss in greater detail why the void for vagueness doctrine is not applicable particularly with respect to the duty to inform under Section 23 (a)(l) of the RH Law. The reason is that the void for vagueness challenge is inextricably related to freedom of speech which, under the exceptional circumstances of this case, once again requires the Court to take steps to protect this constitutional right pursuant to its expanded jurisdiction and as a penumbra to its power to issue rules for the protection and enforcement of constitutional rights.

As previously discussed, Section 23(a)(l) of the Mi Law imposes a duty to inform on both public and private health care service providers:

> SEC. 23. *Prohibited Ads*. -The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> (1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;

In effect, the law requires that *complete* and *correct* information on the government's reproductive health programs and services, including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods, be given to all persons who are qualified beneficiaries under the RH Law. The law and its IRR, however, does not define the nature and extent of "complete and correct information." Petitioners claim that, without this definition, the duty to inform should be nullified under the void for vagueness doctrine.

I disagree.

The RH Law enjoys the presumption of constitutionality and should be given a construction which will avoid its nullity. The phrase "[k]nowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services" under Section 23(a)(l) of the RH Law should be reasonably and narrowly construed as merely requiring the health care service provider to provide and explain to persons the list of the government's reproductive health programs and services under the RH Law. To illustrate, if the government's reproductive health programs and services under the RH Law consists of A, B, C and D, then a health care service provider is required to transmit this information to a person qualified to avail of the benefits under the law.

But it is not as simple as that

The RH Law itself provides that the individual should be allowed to make a free and informed choice. As a result, the government has set a self-limiting policy that it will not endorse any particular family planning method. Yet, invariably, potential beneficiaries of these programs and services will seek the advice or counsel of health care service providers as to which programs and services they should avail of.

When this occurs, can the government control the opinions that health care service providers will give the potential beneficiaries by limiting the content of such opinions? That is, can the government prevent health care service providers from giving their opinions or controlling the content of their opinions, in favor or against, a particular reproductive health service or program by

mandating that only a particular opinion will comply with the "complete and correct information" standard under Section 23 (a) (1) of the RH Law?

I submit that the government cannot do so without violating the Free Speech Clause.

The "complete and correct information" standard cannot be construed as covering matters regarding the professional opinions (including the opinions of a conscientious objector on religious or ethical grounds as previously discussed) of health service providers, either for, or against, these programs and services because this would constitute an abridgement of freedom of speech through subsequent punishment. The government cannot curtail such opinions without showing a clear and present danger that will bring about the substantive evils that Congress has a right to prevent,[69] In the case at bar, there is no attempt on the part of the government to satisfy the clear and present danger test. Consequently, the "complete and correct information" standard under Section 23(a)(l) should be narrowly construed in order not to violate the Free Speech Clause. As earlier noted, the only way to save it from constitutional infirmity is to construe the "complete and correct information" standard as referring to information containing the *list* of the government's reproductive health programs and services under the RH Law. Anything beyond that would transgress the free speech guarantee of the Constitution.

Indubitably, an expansive and broad interpretation of the "complete and correct information" standard will give the government the unbridled capacity to censor speech by only allowing opinions on the reproductive health programs and services under the RH Law which, it favors. The government can use the "complete and correct information" standard to force health care service providers to endorse the former's preferred family planning method despite the clear policy of the RH Law granting free and informed choice to the individual. This cannot be done without violating the Free Speech Clause.

Of course, this would mean that health care service providers, who are for or against certain programs and services under the RH Law, will be able to influence potential beneficiaries over which family planning method or means to avail of. This is the price of living in a democratic polity, under our constitutional order, where opinions are freely expressed and exchanged. The Constitution guarantees freedom of speech and, thus, tilts the balance in favor of the individual's right to free speech unless the State can show that controlling the individual's speech can pass the clear and present danger test. Here, as afore-stated, the government has failed to satisfy this test. If the government desires to push a preferred family planning method, it has the full machinery of the State to back up its information campaign under Section 20 of the RH Law. However, it cannot force individual health care service providers, under pain of penal liability, to express opinions that are favorable to certain reproductive health programs and services under the RH Law. Government may try to convince health care service providers, but not force them.

The above disquisition should not, of course, be taken to mean that health care service providers shall be exempt from their professional or ethical responsibilities which they owe to their patients and which may result to administrative, civil or criminal liabilities of the former based on their code of ethical conduct not unlike the code of ethics for lawyers. But, unavoidably, the professional opinion or advice of health care service providers will be sought by potential beneficiaries under the RH Law and, in that instance, the "complete and correct information" standard cannot be utilized by the State to curtail the health care service provider's freedom of speech.

Thus, I find that the "complete and correct information" standard under Section 23(a)(l) of the RH Law and, hence, the duty to inform (as discussed in a previous subsection) is constitutional *only insofar* as it requires health care service providers to provide a *list* of the government's reproductive health programs and services under the RH Law to qualified beneficiaries. Further, given the afore-discussed peculiar circumstances of this case and in order to adequately protect the right to free speech of health care service providers, it is necessary for the Court to issue an order directing the DOIT to generate the complete and correct list of the government's reproductive health programs and services under the RH Law *which will serve as the template for the "complete and correct information" standard and, hence, the duty to inform under Section 23 (a) (1) of the RH Law.* The DOIT should be directed to distribute this template to all health care service providers covered by the RH Law. This will forestall any confusion on the nature and scope of the "complete and correct information" standard which is necessary given the penal clause under the duty to inform.

7- Equal Protection

I agree with the *ponencia* that the RH Law does not violate the equal protection clause insofar as it is claimed to single out the poor to reduce their numbers and that the poor may be the subject of government subsidy for the programs under the RH Law for reasons stated in *ponencia*.

8. Section 7 (Involuntary Servitude)

I am fully in accord with the ruling of the ponencia that Section 17 of the RH Law does not violate the constitutional prohibition against involuntary servitude and that it is unconstitutional insofar as it imposes a duty to conscientious objectors to render pro bono reproductive health care services to which the conscientious objector objects to on religious or ethical grounds for reasons stated in the ponencia. Corrorarily, the conscientious objector can be required to render pro bono reproductive health care services for as long as it involves services that he or she does not object to on religious or ethical grounds.

9. Delegation of Authority To The FDA

I am fully in accord with, the ruling of the *ponencia* that Congress can validly delegate to the FDA the authority or power to

determine whether the drugs, devices, methods or services to be used under the RH Law comply with constitutional and statutory standards for reasons stated in the *ponencia.*

10. Autonomy Of The Local. Government Units (LGUs) And The Autonomous Region of Muslim Mindanao (ARMM)

I concur with the *ponencia* that the RH Law does not violate the local autonomy of LGUs and the AJRMM guaranteed under Article II, Section 25[70] and Article X, Section 2[71] of the Constitution.

I have reservations, however, with regard to the following statements in the *ponencia*:

> In this case, a reading of the RH Law clearly shows that whether it pertains to the establishment of health care facilities, the hiring of skilled health professionals, or the training of barangay health workers, it would be the **national government** that would provide for the funding of its implementation. Local autonomy is not absolute. The national government still has the say when it comes to national priority programs which the local government is called upon to implement like the RH Law.
>
> Moreover, from the use of the word "endeavour", the local government units are merely encouraged to provide these services. There is nothing in the wording of the law which can be construed as making the availability of these services mandatory for the local government units. For said reason, it cannot be said that the RH Law amounts to an undue encroachment by the national government upon the autonomy enjoyed by the local governments.[72]

First, under Sections 5,[73] 10[74] and 13[75] of the RH Law, the LGUs are not prevented from using their own -funds to provide the specified services therein. The law appears to encourage LGUs to spend for these specified services on the assumption that the LGUs will see for themselves that these services are beneficial to them and, thus, warrant their own expenditure therefor.

Second, the use of the phrase "shall endeavor" appears only in Sections 5 and 6 of the RH Law. Sections 8,[76] 13[77] (last sentence) and 16[78] use the word "shall" relative to the duties required of the LGUs therein. Thus, the duties of the LGUs under these sections are mandatory.

Third, the *ponencia's* construction of the word "endeavor" under Sections 5 and 6 of the RH Law might give the wrong impression that the LGUs are not mandated to cooperate with the national government in the implementation of the programs set under these sections. However, the framework of action of the RH Law is based, among others, on the ¦effective partnership between the national government and LGUs.[79] In fact, the LGUs are effectively designated as implementing agencies of certain, aspects of the programs under the RH Law.

In line with this policy, a more reasonable interpretation of the phrase "shall endeavor" under Sections 5 and 6 is to read it in conjunction with the *proviso* (which is identical for both sections) stating that, "Provided, further, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision." Thus, the use of the phrase "shall endeavor" should be understood as a recognition by Congress of the realities on the ground where the LGUs may not have enough funds to fulfill their mandate under these sections. However, if the national government provides for the needed funds, the LGUs cannot refuse to cooperate and do its part in the implementation of these sections. In other words, under -these sections, the law mandates, not merely encourages, LGUs to fulfill their duties unless prevented from doing so for justifiable reasons such as the lack of available funds.

11. Natural Law

I agree with the *ponencia* that natural law may not, under the particular circumstances of this case, be used to invalidate the RH Law. However, I disagree with the following statements:

> While every law enacted by man emananted from what is perceived as natural law, the Court is not obliged to see if a statute, executive issuance or ordinance is in conformity to it. To begin with, it is not enacted by an acceptable legitimate body. Moreover, natural laws are mere thoughts and notions on inherent rights espoused by theorists, philosophers and theologists. The jurists of the .philosophical, school are interested in the law as an abstraction, rather than in the actual law of the past or present.[80]

These statements, I submit, are not necessary in the disposition of this case and appear to be an inaccurate description of natural law. The Court need not foreclose the usefulness of natural law in resolving future cases. I submit that the statement that natural law is not applicable in the resolution of this particular case suffices.

ACCORDINGLY, I vote to **PARTIALLY GRANT** the petitions.

1. The word "primarily" in Sections 3.01 (a) and 3.01(j) of the Implementing Rules and Regulations is **VOID** for contravening Section 4(a) of Republic Act No. 10354 and Article II, Section 12 of Constitution.

2. The phrase, "*Provided, further, That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible," in Section 7 and the phrase, "however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible*" in Section 23(a)(3) of Republic Act No. 10354 are **UNCONSTITUTIONAL** for violating the Free Exercise of Religion Clause under Article III, Section 5 of the Constitution. Consequently, Sections 5.24(b) to (e) and 5.25 of the Implementing Rules and Regulations, insofar as they implement the aforesaid provisions, are **VOID.**

3. The last paragraph of Section 5.24 of the Implementing Rules and Regulations is VOID insofar as it deprives the skilled health professionals enumerated therein of the right to conscientious objection for violating Section 4(n) in relation to Section 23(a)(3) of Republic Act No. 10354 and Equal Protection Clause under Article III, Section 1 of the Constitution.

4. Section 23(a)(2)(i) of Republic Act No. 10354 is **UNCONSTITUTIONAL** for violating the constitutional right of both spouses to found a family under Article XV, Section 3(1) of the Constitution.

5. The phrase "except when the minor is already a parent or has had a miscarriage" in Section 7 of Republic Act No. 10354 is **UNCONSTITUTIONAL** for violating the natural and primary right of parents to rear their minor children under Article II, Section 12 of the Constitution.

6. Section 17 of Republic Act No. 10354 is **UNCONSTITUTIONAL** *insofar* as it requires conscientious objectors to render *pro bono* reproductive health care services to which the conscientious objector objects to on religious or ethical grounds as a prerequisite to PhilHealth accreditation.

Pursuant to the expanded jurisdiction of this Court and its power to Issue rules for the protection and enforcement of constitutional rights, the Court should issue an order:

1. **DIRECTING** the Food and Drug Administration to formulate the rules of procedure in the screening, evaluation and approval of all contraceptive drugs and devices that will be used under Republic Act No. 10354. The rules of procedure shall contain the following minimum requirements of due process: (a) publication, notice and hearing, (b) The Solicitor General shall be mandated to appear to represent the unborn and the State's interest in the protection of the life of the unborn, (c) interested parties shall be allowed to intervene, (d) the standard laid down in the Constitution, as adopted under Republic Act No. 10354, as to what constitutes allowable contraceptives shall be strictly followed, i.e., those which do not harm or destroy the life of the unborn from conception/fertilization, (e) in weighing the evidence, all reasonable doubts shall be resolved in favor of the protection and preservation of the right to life of the unborn from conception/fertilization, and (f) the other requirements of administrative due process, as summarized in *Ang Tibay*, shall be complied with.

   The Food and Drug Administration is **DIRECTED** to submit these rules of procedure, within thirty (30) from receipt of this decision, for the Court's appropriate action,

2. **DIRECTING** the Food and Drug Administration to **IMMEDIATELY**, and in no case to exceed five days from the receipt of this decision, INFORM this Court if the contraceptives that it previously approved for use and distribution in the Philippines were screened, evaluated and/or tested against the standard laid down in the Constitution, as adopted under Republic Act No. 10354, on allowable contraceptives, *i.e.*, those which do not harm or destroy the life of the unborn from conception/fertilization; and those which do not prevent the implantation of the fertilized ovum. The contraceptive drugs and. devices previously approved by the Food and Drug Administration should not include contraceptives which (.1) do not provide a 100% guarantee of preventing fertilization and (2) has a fail-safe mechanism which destroys the fertilized ovum if fertilization occurs (*e.g.*, prevents the implantation of the fertilized ovum on the uterus).

3. **DIRECTING** the Department of Health in coordination with other concerned agencies to formulate the rules and regulations or guidelines which will govern the purchase and distribution/dispensation of the products or supplies under Section 9 of Republic Act No. 10354 covered by the certification from, the Food and Drug Administration that said product and supply is made available on the condition that it is not to be used as an abortifacient subject to the following minimum due process requirements: (a) publication, notice and hearing, (b) the Solicitor General shall be mandated to represent the unborn and the State's interest in the protection of the life of the unborn, and (c) interested parties shall be allowed to intervene. The rules and regulations or guidelines shall provide sufficient detail as to the manner by which said product and supply shall be strictly regulated in order that they will not be used as an abortifacient and in order to sufficiently safeguard the right to life of the unborn. Pending the issuance and publication of these rules by the Department of Health, the Temporary Restraining Order insofar as the proviso in Section 9 of Republic Act No. 10354, as implemented by Section 7.03 of the IRR, relative to the subject products and supplies, which are made available on the condition that they will not be used as an abortifacient, shall remain in force.

4. DIRECTING the Department of Health to generate the complete and correct list of the government's reproductive health

programs and services under Republic /Vet No. 10354 which will serve as the template for the complete and correct information standard and, hence, the duty to inform under Section 23(a)(l) of Republic Act No. 10354. The Department of Health is **DIRECTED** to distribute copies of this template to all health care service providers covered by Republic Act No. 10354.

---

[1] Responsible Parenthood and Reproductive Health Act of 2012.

[2] Constitution, Article VIII, Section 1.

[3] Constitution, Article VIII, Section 5(5).

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

[5] IV RECORD, CONSTITUTIONAL COMMISSION 579 (September 12, 1986).

[6] IV RECORD, CONSTITUTIONAL COMMISSION 597 (September 12, 1986).

[7] IV RECORD, CONSTITUTIONAL COMMISSION 599 (September 12,1986).

[8] IV RECORD, CONSTITUTIONAL COMMISSION 600 (September 12,1986).

[9] IV RECORD, CONSTITUTIONAL COMMISSION 602 (September 12, 1986).

[10] IV RECORD, CONSTITUTIONAL COMMISSION 683 (September 16, 1986).

[11] 410 U.S. 113(1973).

[12] IV RECORD, CONSTITUTIONAL COMMISSION 682 (September 16,1986).

[13] IV RECORD, CONSTITUTIONAL COMMISSION 707 (September 17,1986).

[14] IV RECORD, CONSTITUTIONAL COMMISSION 683 (September 16, 1986).

[15] IV RECORD, CONSTITUTIONAL COMMISSION 698 (September 17,1986).

[16] IV RECORD, CONSTITUTIONAL COMMISSION 803 (September 19, 1986).

[17] IV RECORD, CONSTITUTIONAL COMMISSION 800 (September 19, 1986).

[18] IV RECORD, CONSTITUTIONAL COMMISSION 668 (September 16,1986).

[19] IV RECORD, CONSTITUTIONAL COMMISSION 669 (September 16, 1986).

[20] IV RECORD, CONSTITUTIONAL COMMISSION 711 (September 17, 1986).

[21] IV RECORD, CONSTITUTIONAL COMMISSION 745 (September 17, 1986).

[22] IV RECORD, CONSTITUTIONAL COMMISSION 801-802 (September 19, 1986).

[23] IV RECORD, CONSTITUTIONAL COMMISSION 668 (September 16, 1986); IV RECORD, CONSTITUTIONAL COMMISSION 705, 708, 724 (September 17, 1986); IV RECORD, CONSTITUTIONAL COMMISSION 800 (September 19, 1986).

[24] IV RECORD, CONSTITUTIONAL COMMISSION 807 (September 19, 1986).

[25] IV RECORD, CONSTITUTIONAL COMMISSION 808 (September 19, 1986).

[26] Memorandum for Alliance for the Family Foundation Philippines, Inc. (ALFI) et al. (Vol. 1), pp. 41-43.

[27] See *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317, 337-338.

[28] Supra note 10.

[29] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7.

[30] Memorandum for Petitioners ALFI, et al. (Vol. 1), pp. 168-169.

[31] 361 Phil. 73 (1999).

[32] Id. at 88.

[33] TSN, July 9,2013, pp. 49-51.

[34] As previously discussed, the word "primarily" is void.

[35] *See Oposa v. Factoran* G.R. No. 101083, July 30,1993,224 SCRA 792, 802-803.

[36] 69 Phil. 635(1940).

[37] Memorandum for the Solicitor General, p. 17.

[38] Id. at. 7.

[39] **Section 7.03** *Drugs, Medicines, and Health Products Already in the EDL*. Drags, medicines, and health products for reproductive health services already included in the EDL as of the effectivity of these Rules shall remain in the EDL, pending FDA certification that these are not to be used as abortifacients.

[40] Like a law banning alcohol or cigarettes.

[41] Ponencia, pp. 70-71,82.

[42] But it should be noted that Section 7 of the RH Law effectively grants to non-maternity specially hospitals and hospitals owned and operated by a religious group the same right of a conscientious objector under Section 23 although the term "conscientious objector" is not specifically used in Section 7, to wit:

SBC. 7. *Access to Family Planning*. - All accredited public health facilities shall provide a full range of modern family planning methods, winch shall also include medical consultation,?, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children: Provided, 'That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods: *Provided, further,* That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible: *Provided, finally*, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344.

[43] REPUBLIC ACT No. 8344 dated August 25,1997 pertinently provides that:

Section 2. *Section 2 of Bat as Pambansa Bilang 702 is hereby deleted and in place thereof new sections 2, 3 and 4 are added, to read as follows:*

> "SEC. 2. For purposes of this Act, the following definitions shall govern: "(a) 'Emergency' - a condition or state of a patient wherein based on the objective findings of a prudent medical officer on duty for the day there is immediate danger and where delay in initial support and treatment may cause loss of life or cause permanent disability to the patient.
>
> "(b) 'Serious case' - refers to a condition of a patient characterized by gravity or danger wherein based on the objective findings of a prudent medical officer on duty for the day when left unattended to, may cause loss of life or cause permanent disability to the patient. x x x"

[44] *Estrada v. Escritor*, 455 Phil. 411 (2003).

[45] Id. at 600.

[46] http://www.vatican.va/holv father/paul vi/encyclicals/documents/hf_p-vi_enc 25071968 humanae-vitae_en.html last accessed on March 24, 2014.

[47] Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary (2009) at 330.

[48] **Section 5.22** *Exemption of Private Hospitals from Providing Family Planning Services.* Private health facilities shall provide a full range of modern family planning methods to clients, unless the hospital is owned and operated by a religious group, or is classified as a non-maternity specialty hospital, as part of their annual licensing and accreditation requirements.

In order to receive exemption from providing the full range of modern family planning methods, the health care facility must comply with the following requirements:

a) Submission of proof of hospital ownership and management by a religious group or its status as a non-maternity specialty hospital;
b) Submission to the DOH of an affidavit stating the modern family planning methods that the facility refuses to provide and the reasons for its objection;
c) Posting of a notice at the entrance of the facility, in a prominent location and using a clear/legible layout and font, enumerating the reproductive health services the facility does not provide; and
d) Other requirements as determined by the DOB',

Within sixty (60) days from the effectivity of these Rules, the DOH shall develop guidelines for the implementation of this provision.

[49] **Section 5.23** *Private Skilled Health Professional as a Conscientious Objector*. In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a private skilled health professional shall comply with the following requirements:

a) Submission to the DOH. of an affidavit, stating the modern family planning methods that he or she refuses to provide and his or her reasons for objection;

b) Posting of a notice at the entrance of the clinic or place of practice, in a prominent location and using a clear/legible font, enumerating the reproductive health services he or she refuses to provide; and

c) Other requirements as determined by the DOH.

Within sixty (60) days from the effectivity of these Rules, the DOH shall develop guidelines for the implementation of this provision.

Section 5.24 Public Skilled Health Professional as a Conscientious Objector. In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skilled health professional shall comply with the following requirements:

a) The skilled health professional shall explain to the client the limited range of services he/she can provide;
b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;
c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client's travel arrangements and financial capacity;
d) Written documentation of compliance with the preceding requirements; and
e) Other requirements as determined by the DOH.

In the event where the public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay.

Provided, That skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules, cannot be considered as conscientious objectors.

Within sixty (60) days from the effectivity of these rules, the DOH shall develop guidelines for the implementation of this provision.

[51] Supra note, 44.

[52] *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas,* 487 Phil. 531 583-584 (2004)

[53] Id. at 585.

[54] Id. at 644. (Panganiban, J. dissenting)

[55] Id.

[56] Id. at 645-646.

[57] Supra note 47at 83.

[58] The Slate recognizes the role of women in nation-building, and shall ensure (lie fundamental equality before the law of women and men.

[59] CONSTITUTION, Article VIII, Section 1.

[60] Supra note 47 at 83.

[61] Id.

[62] *Vancil v. Belmes*, 411 Phil. 359, 365 (2001).

[63] Supra note 47 at 85.

[64] Section 14 of the RH Law states:

SEC. 14. *Age- and Development-Appropriate Reproductive Health Education.* — The State shall provide age- and development-appropriate reproductive health education to adolescents which shall be taught by adequately trained teachers informal and nonformal educational system and integrated in relevant subjects such as, but not limited to, values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence: against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood: *Provided,* That flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents-teachers-community associations, school officials and other interest groups. The Department of Education (DepED) shall formulate a curriculum which shall be used by public schools and may be adopted by private schools.

[65] Section 4(b), RH Law.

[66] *British American 'Tobacco v. Camacho*, 584 Phil. 489 (2008).

[67] Id.

[68] Id.

[69] *See* Cruz, Constitutional Law (2007), at 213-215.

[70] The State shall ensure the autonomy of local governments.

[71] The territorial and political subdivisions shall enjoy local autonomy.

[72] Ponencia, p. 91.

[73] SEC. 5. *Hiring of Skilled Health Professionals for Maternal Health Care and Skilled Birth Attendance*. -The LGUs **shall endeavor** to hire an adequate number of nurses, midwives and other skilled health professionals, for maternal health care and skilled birth attendance to achieve an ideal skilled health professional-to-patient ratio taking into consideration DOH targets: Provided, That people in geographically isolated or highly populated and depressed areas shall be provided, the same level of

access to health care: Provided, further, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision. [Emphasis supplied]

[74] SEC. 10. *Procurement and Distribution of Family Planning Supplies,* - The DOH shall procure, distribute to LGUs and monitor the usage of family planning supplies for the whole country. The DOLI shall coordinate with all appropriate local government bodies to plan and implement this procurement and distribution program. The supply and budget allotments shall be based on, among others, the current levels and projections of the following:

(a) Number of women of reproductive age and couples who want to space or limit their children;
(b) Contraceptive prevalence rate, by type of method used; and
(c) Cost of family planning supplies.

Provided, That LGUs may implement its own procurement, distribution and monitoring program consistent with the overall provisions of this Act and the guidelines of the DOH. [Emphasis supplied]

[75] SEC. 13. *Mobile Health Care Service.* — The national or the local government may provide each provincial, city, municipal and district hospital with a Mobile Health Care Service (MHCS) in the form of a van or oilier means of transportation appropriate to its terrain, taking into consideration the health care needs of each LGU. The MHCS shall deliver health care goods and services to its constituents, more particularly to the poor and needy, as well as disseminate knowledge and information on reproductive health. The MHCS shall be operated by skilled health providers and adequately equipped with a wide range of health care materials and information dissemination devices and equipment, the latter including, but not limited to, a television set for audio-visual presentations. All MHCS shall be operated by LGUs of provinces and highly urbanized cities. [Emphasis supplied]

[76] SEC. 8. *Maternal Death Review and Fetal and Infant Death Review.* - All LGUs, national and local government hospitals, and other public health units shall conduct an annual Maternal Death Review and Fetal and Infant Death Review in accordance with the guidelines sot by the DOH. Such review should result in an evidence-based programming and budgeting process that would contribute to the development of more responsive reproductive health services to promote women's health and safe motherhood. [Emphasis supplied]

[77] SEC. 13. *Mobile Health Care Service.* — The national or the local government may provide each provincial, city, municipal and district hospital with a Mobile Health Care Service (MHCS) in the form of a van or other means of transportation appropriate to its terrain, taking into consideration the health care needs of each LGU. The MHCS shall deliver health, care goods and services to its constituents, more particularly to the poor and needy, as well as disseminate knowledge and information on reproductive health. The MHCS shall be operated by skilled health providers and adequately equipped with a wide range of health care materials and information dissemination devices and equipment, the latter including, but not limited to, a television set for audio-visual presentations. All MHCS shall be operated by LGUs of provinces and highly urbanized cities. (Emphasis supplied)

[78] SEC. 16. *Capacity Building of Barangay Health Workers (BHWs)*. - The DOH shall be responsible for disseminating information and providing training programs to the LGUs. The LGUs, with the technical assistance of the DOH, shall be responsible for the training of BHWs and other barangay volunteers on the promotion of reproductive health. The DOH shall provide the LGUs with medical supplies and equipment needed by BHWs to carry out their functions effectively: Provided, further, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision including the possible provision of additional honoraria for BHWs. (Emphasis supplied)

[79] Section f(3)(2), RH Law:

SEC. 3. *Guiding Principles for Implementation*. - This Act declares the following as guiding principles:

(f) The State shall promote programs that: x x x
(3) ensure effective partnership among national government, local government units (LGUs) and the private sector in the design, implementation, coordination, integration, monitoring and evaluation of people-centered programs to enhance the quality of life and environmental protection; (Emphasis supplied)

[80] Ponencia, p. 92.

CONCURRING OPINION

ABAD, *J.*:

I concur with the majority.

Remarkably, Republic Act 10354 or the Responsible Parenthood and Reproductive Health Act of 2012, the RH Law for short, repeatedly extols the principles of gender equality, sustainable human development, health, education, information, the sanctity of human life and the family, improved quality of life, freedom of religious convictions, ethics, and cultural beliefs, freedom from poverty, and other ennobled principles. But these are already part of existing laws and no one can object to them. What they do is apparently embellish what the RH Law seeks to accomplish.

Stripped of euphemisms and the echoes of these principles, what the Saw really wants is to limit population growth with an eye to "sound replacement rate"[1] through massive birth control, sex education, and neutralization of opposing views. It seems not to matter that population growth has, according to a United Nations (UN) study, persistently declined in the Philippines from 7.42 per couple in 1950 to 3.27 in 2005-2002[2] which means that couples today have fewer children even without the RH law.

According to the same UN study, neighboring Asian countries like Japan, Singapore, Taiwan, South Korea, and even China which rigidly implemented birth control programs in the past now have worrisome far-below replacement levels. Having developed a mind-set that children are a burden to the family and to the nation, young couples refuse to have them despite government incentives and awards. This prompted former Singapore Prime Minister Lee Kwan Yew to admit in a 2013 speech that "At these low birth rates we will rapidly age and shrink."

Yet children are not such a burden. Columnist Anne Marie Pamintuan, quoted World Bank's Vice President for East Asia and Pacific, Axel Von Trotsenberg, as saying that "the ultimate asset of the Philippines are itspeople."[3]

Facial Challenge

The *ponencia* is right that the procedural challenges to the petitions are unmeritorious. In particular, respondents claim that the Court should dismiss these actions since they are a mere facial challenge on the constitutionality of the RH Law as opposed to an actual breach of its provisions and the filing of a case in court on account of such breach. The petitions-should not be allowed, they add, since this challenge is not about the exercise of the freedom of expression, an exception to such limitation.

But the right to life of the unborn child, which is at the center of these controversies, cannot be compared with rights that are best examined in cases of actual violations. Obviously, the Court cannot wait for the actual extermination of an unborn child before assessing the constitutional validity of the law that petitioners claim to permit such action. A law claimed to threaten a child's right to live sufficiently justifies a constitutional facial challenge.

Constitutional Barrier

There is no question of course that every couple planning their family and every woman of ample discernment has the right to use natural or artificial methods to avoid pregnancy. This much is clear. But, in seeking to promote ' the exercise of this right, the RH Law must hurdle certain constitutional barriers: 1) the right to fife of the unborn child that outlaws abortion; 2) the right to health; 3) the free exercise of religion: 4) the right to due process of law; and 4) the freedom of expression.

Section 9 and
the Right to Life of the Unborn

Section 12, Article II (Declaration of Principles and State Policies), of the 1987 Constitution makes it the duty of the State to protect the right to life of the unborn from conception. Thus

> Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception, x x x

1. When Life Begins

When the man's sperm is ejected into the woman's uterus, it travels inward towards the ovary through the fallopian tube. If the ovary has produced and released an ovum, the sperm will meet and fertilize it, producing a zygote, which is a new cell formed by that union. The zygote then travels outward through the fallopian tube towards the uterus, meantime growing into a fleshed embryo, and implants itself on the uterine wall where it will further grow into a fetus and eventually into a full-grown child ready for delivery by its mother at the appropriate time.[4]

Some people believe that the conception of the child begins only from the moment the fleshed embryo implants itself on the mother's uterine wall where it will draw the food and nutrition it needs to survive and grow into a fetus. It is the termination of the embryo or the fetus at this stage, painful, bloody, and depressing, that some are quick to condemn as abortion. Preventing implantation by quietly slaying the zygote or the embryo with little or no blood before it reaches the uterine wall is to them not

abortion.

But they are wrong. The 1987 Constitution is clear: the life of a child begins "from conception" and the dictionary, which is the final arbiter of the common meaning of words, states that "conception" is "the act of being pregnant," specifically, the "formation of a viable zygote."[5] Science has proved that a new individual comes into being from the moment the zygote is formed. Indeed, the zygote already has a genome (DNA to others) that identifies it as a human being and determines its sex.[6] The union of man and woman in the fertilized ovum is the beginning of another person's life.

With the Constitution, the Filipino people have in effect covenanted that the fertilized ovum or zygote is a person. And it is a covenant that binds. Indeed, the RH Law accepts this inviolable principle and precisely prohibits the use of abortifacient that induces "the prevention of the fertilized ovum to reach and be implanted in the mother's womb." Ambushing the fertilized ovum as it travels down the fallopian tube to prevent its implantation on the uterine wall is abortion.

2. Preventing Fertilization

Since the conception of a child begins from the fertilization of the ovum, it is evident that merely preventing the woman from ovulating to produce ovum or preventing the sperm from fertilizing it does not constitute abortion. Contraception in this sense does not violate the Constitutional right to life since the unborn has not as yet been conceived. The law may authorize or even encourage this kind of contraception since it merely prevents conception. The life of an unborn child is not at stake.

3. Free Access to Contraceptives

Barriers like condoms, diaphragms, and contraceptive sponges as well as the natural rhythm method prevent the meeting of the sperm and the ovum. These methods have not been seriously assailed as abortifacient. But birth control pills and intrauterine devices (IUDs) are another matter. A sector of society led by petitioners vehemently assails them as unsafe and abortifacient, meaning weapons of abortion. And here lies the central issue in this case that will not go away unless resolved.

Birth control pills are essentially "hormonal"" contraceptives that, according to the World Health Organization (WHO), will avoid conception in two ways: 1) they will prevent the ovary from producing ova or eggs and 2) they will generate thick cervix mucus that would prevent the sperm from reaching and fertilizing the ovum if one is produced. These hormonal contraceptives also come in the forms of injectables with effects that last for about three months; patches that last seven days; or implants on women's upper arms that continuously release drugs from 3 to 5 years.

IUDs, on the other hand, are small objects that are implanted into the woman's womb, releases chemical substances, and hinders the fertilization of the ovum as its primary function. The IUDs in current use are about the size and shape of a small pendant cross. They prevent conception for 5 or 10 years. One kind is made of copper that releases toxic particles that supposedly kill sperm cells which enter the womb. Another kind releases synthetic hormones into the womb, inducing thick mucus that makes it difficult for the sperm to reach the ovum.[7]

The Food and Drug Administration (FDA) has been routinely allowing public access to hormonal contraceptives and IUDs even before the passage of the RH Law. The outcry for the law's passage to make these things available to whoever wants them is the lament of the unenlightened.

In reality, the government senses a strong resistance to their use, borne of beliefs that they are unsafe and abortifacient. The RH Law precisely aims to put an end to this resistance by imposing certain sanctions against hospitals, physicians, nurses, midwives, and other health care providers who communicate to others the view that contraceptives and IUDs are unsafe and abortifacient, refuse to prescribe them, or decline to perform the required procedures for their use.

4. Legislative Attempt to Settle the Issues against Birth Control Pills and IUDs.

By their nature, hormonal contraceptives and IUDs interfere with the woman" s normal reproductive system. Consequently, the FDA, which has the required technical competence and skills, need to evaluate, test, and approve their use. The RH Law acknowledges this need in its policy statements in Section 2, in its guidelines for implementation in Section 3, and in its definition of terms in Section 4(a). It is consistent with the FDA law and no one can object to it.

Apparently, however, the FDA's seals of approval have not sufficiently spurred the use of hormonal contraceptives and IUDs. To remedy this and no doubt to quell the belief that they are unsafe and abortifacient. Section 9 of the RH law categorically declares hormonal contraceptives and IUDs "safe"' and "non-abortifacient" like other family planning products and supplies. It also ordains their inclusion in the National Drug Formulary which is also the Essential Drugs List. The first sentence of Section 9 provides:

> Section 9. *The Philippine National Drug Formulary System and Family Planning Supplies.* - The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-

> abortifacient and effective family planning products and supplies, x x x
>
> x x x x

The above apparent!)' elevates into the status of a law the proposition that hormonal contraceptives and IUDs belong to the class of safe and non-abortifacient family planning products and supplies. Indeed, it ordains their inclusion in the National Drug Formulary or Essential Drug List (EDL) to join government approved drugs and devices.

The second sentence of section 9 of course speaks of inclusion or removal -of family planning supplies from the EDL based on existing practice and in consultation with reputable medical associations, thus:

> x x x The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines, x x x

But the above evidently refers to products and supplies other than the hormonal contraceptives and IlJDs mentioned in the preceding sentence. This is how it should be understood since that preceding sentence already declares these two products as safe and non-abortifacient and must by law be included in that List.

If the Court were to treat the first sentence of Section 9 above as a legislative mandate that hormonal contraceptives and IUDS are safe and non-abortifacient, then the FDA's former authority to determine whether or not hormonal contraceptives and IUDs are safe and non-abortifacient would be circumscribed. The law would already have made the determination for the FDA.

The real question before the Court is whether or not Congress can elevate to the status of a law the medical and scientific proposition that hormonal contraceptives and IUDs are safe and non-abortifacient and order their inclusion in the National Drug Formulary without violating the Constitution. Respondents claim that Congress can; petitioners claim otherwise.

The issue of whether or not hormonal contraceptives and IUDS are safe and non-abortifacient is so central to the aims of the RH Law that the OSG has as a matter of fact been quick to defend the authority of Congress to convert such factual finding into law. The OSG insists that everyone, including the Court, has to defer to this finding considering that the legislature is better equipped to make it. Specifically, the OSG said:

> The Congress, employing its vast fact-finding and investigative resources, received voluminous testimony and evidence on whether contraceptives and contraceptive devices are abortifacients. It thereafter made a finding that the used of current reproductive devices is not abortifacient. Such finding of legislative fact, which became the basis for the enactment of the RH Law, should be entitled to great weight and cannot be equated with grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Congress.

To support this view, the OSG claims that scientific evidence of the highest standards support the legislative determination in Section 9. It rests on the opinions of a group of Philippine medical experts called the Universal Health Care Study'Group (UHC) and the World Health Organization (WHO). The OSG even submits copies of these opinions as part of its comment and discusses them extensively.

5. UHC Study Group Opinion

But the UHC Study Group based its conclusion that hormonal contraceptives and IUDs are not abortifacient on the belief that abortion refers only to a viable fetus; the death of a mere fertilized ovum in the hand of these contraceptives do not in the mind of this group amount to abortion. Its paper thus states:

Abortion is the termination of an established pregnancy before fetal viability (the fetus' ability to exist independently of the mother). Aside from the 50% of zygotes that are naturally unable to implant, an additional wastage of about 20% of all fertilized eggs occurs due to spontaneous abortions (miscarriages).

The UHC Study Group seems to live in another planet. Its understanding of when the life of the unborn child begins essentially differs from what the Constitution states, i.e., from the time of conception, something that the RH law itself concedes. Consequently, the group's study fails to connect to the issue of when contraceptives act as abortifacients.

Besides, the UHC Study Group's findings cannot be seriously regarded as near undeniable truth. The UHC group is not a recognized medical or scientific society like the International Union against Cancer or a renowned medical research center like the Mayo Clinic that have reputations for sound medical and scientific studies. The paper it submitted to Congress has not been subjected to any credible and independent peer review. Indeed, the group has never published a paper or study in some reputable scientific or medical journal. Its members met one day in August 2011 and in one sitting found and concluded that existing contraceptives and IUDs are safe and non-abortifacient.

6. WHO Opinions

Congress, according to the OSG relied heavily on WHO's documented opinions regarding the legality and merit of contraceptives. But, firstly, that organization cannot be considered an impartial authority on the use of contraceptives since it has always been a strong advocate of birth control. Its Media Centre Fact Sheet on Family Planning dated May 2013, reads:

> WHO is working to promote family planning by producing evidence-based guidelines on safety and service delivery of contraceptive methods, developing quality standards and providing prerqualification of contraceptive commodities, and helping countries introduce, adapt, and implement these tools to meei their needs, x x x

Secondly, the cited WHO studies are either inconclusive or constitute proof that hormonal contraceptives and IUDs are indeed abortifacient. For instance, the WHO said that "[w]hen used appropriately and in doses/ways recommended, none of these methods have been shown to cause abortion of an implanted fetus."[8] That needs repetition: "abortion of an implanted fetus."

In other words, the only assurance the WHO can give based on its studies is that, when the contraceptive pill has been properly taken, it will not cause "abortion of an implanted fetus." This is of course based on the WHO mind-set that the life of the unborn begins only from the time of the implantation of the fetus on the uterine wall—the same mind-set as the UHC Study Group. But, as repeatedly stated, this contravenes what the Constitution says: the life of the unborn begins "from conception,"[9] which is from the time of the fertilization of the ovum as the RH law itself acknowledges.[10] The WHO opinions do not, therefore, connect.

Notably, the WHO is reluctant to admit that most contraceptives perform three functions: they 1) suppress ovulation; 2) prevent fertilization of an ovum by a sperm; and 3) inhibit implantation of a fertilized ovum in the uterine lining.[11] When the first two functions fail and an ovum is nonetheless fertilized (a phenomenon called "breakthrough ovulation"), the contraceptives have the potential for functioning as abortifacient and terminating the fertilized ovum by inhibiting implantation.[12] This is abortion that the Constitution prohibits.

Despite its reluctance, however, the WHO implicitly acknowledges the fact in its several opinions given to Congress. For instance, the WHO admits in one of its opinion papers that hormonal contraceptives and IUDs "directly or indirectly have effect on the endometrium that may hypothetically prevent implantation" although "there is no scientific evidence supporting this possibility."[13] The endometrium is the inner lining of the womb where the embryo lodges, draws food, and develops into a full grown child.[14]

The WHO's stated opinion stands examination. A hypothesis is a proposition tentatively assumed in order to draw out its logical or empirical consequences and so test its accord with the facts that are known or may be determined.[15] This means in this case that the severe harm contraceptives and IUDs inflict on the endomeirium, a known fact, will, given what science knows, logically or empirically prevent implantation and cause abortion. Indeed, the U.S. Physicians Drug Reference for 1978 and 1998 categorically state that an impaired endometrium prevents implantation.[16]

Not only this, the WHO further admits that, "[gjiven the high efficacy of combined oral contraceptives in preventing ovulation, it is very unlikely that 'interference with implantation' is a primary mechanism of contraceptive action."[17] The WHO repeats this point in another paper.[18] Both statements imply that "interference with implantation," while not a primary mechanism of contraceptives, is its secondary mechanism. This means that they also function as abortifacients.

More, the WHO also admits that progestin-only hormonal contraceptive can cause the endometrium, where fertilized eggs are implanted, to suffer injury. It said, "Progestin-only methods also cause changes in the endometrium. However, these changes show great variability among patients, from atrophy to normal secretory structures."[19] This means that If implantation of a fertilized ovum on the endometrium nonetheless succeeds, the fertilized ovum would still die. As the WHO said in a reply to Congress, a fertilized ovum is not viable unless it is able to implant on a healthy endometrium since there is "very limited amount of metabolic support in a fertilized human egg."[20] Hormonal contraceptives, like lUDs, have the potential for causing abortion.

The world is not in want of outstanding international research groups that do not get funding from pro-abortion organizations or states. But Congress had not tapped them. For instance, the International Agency for Research, on Cancer (IARC) said in 2011 that "the progestogen component (of combined hormonal contraceptives) also...reduces the receptivity of the endometrium for implantation.[21]

7. Drug Manufacturers Evidence

Drug manufacturers themselves, whose products the FDA has approved, state in their inserts that their contraceptives perform the dual functions mentioned above. Although the Court is not a trier of facts, it can take judicial notice of facts that are self-evident or are capable of unquestionable demonstration.[22] All one needs to do is buy such contraceptives from the local drugstore and

read the best that the manufacturers can say about their products. One of them, from a popular oral contraceptive Lynstrenol under the brand name of Daphne, was read into the record during the oral argument and had not been challenged. It says:

> Pharmacology: mechanics of action:
>
> Effects on Endometrium: Lynestrenol (DAPHNE) impairs implantation, perhaps by altering its special receptors for hormones. It may also be indirectly impaired by interfering with the corpus lutein.
>
> Effects 'on tubal action: Lynestrenol (DAPHNE) affects tubal secretions and microvili, hence blastocyst and ovum transport are delayed.

Any unnatural delay In the transport of the zygote down through the fallopian tube to the uterine wall will of course prevent timely implantation and cause the fertilized ovum to be aborted. JSince abortion is prohibited in the Philippines, this statement is against the manufacturer's interest and is admissible evidence against it.

Another hormonal contraceptive is called Trust Pill but goes by the generic name Ethinyl Estradiol, Levonorgestrel, and Ferrous Fumarate, It is manufactured in Thailand by Ponds Chemical and imported by DKT Philippines of Libis, Quezon City. The packet does not bear the restriction that it must be prescribed by a physician. Its insert, also read during the oral argument, states:

> Prior to starting Ethinyl Estradiol + Levonorgestrel + Ferrous Fumarate (TRUST PILL) tablet, pregnancy must be ruled out. However, should a pregnancy occur while taking the tablet, the administration has to be withdrawn at once.

The pill is intended to prevent fertilization of the ovum. But if this is not achieved, it is implicit from the above statement that continued use will harm the fertilized ovum and cause abortion. The manufacturer is compelled to disclose this fact in the insert because abortifacient is illegal in the Philippines. This pill is a double barrelled pill. It shoots the ovum to prevent ovulation and shoots the zygote or little Junior if fertilization takes place-abortion.

But the irony of this is that women who use Trust Pill presumably do so because they believe that it will prevent conception. Consequently, it is not likely that they would undergo testing for pregnancy from day to day while taking the pill to enable them to decide when to stop using it and have their child.

Yasmin, a 3rd generation oral contraceptive, has this announcement for online distribution in the Philippines: Yasmin "prevents ovulation (the release of an egg from an ovary) and also causes changes in your cervical and uterine lining, making it harder for sperm to reach the uterus and harder for a fertilized egg to attach to the uterus."[23]

IUDs also serve as abortifacients. The WHO on whom Congress relied in writing the RH Law said that "During the use of copper-releasing IUDs the reaction is enhanced by the release of copper ions into the luminal fluids of the genital tract, which is toxic to sperm."[24] And how do these toxic ions affect the uterus where the fertilized ovum is supposed to implant itself? The WHO said in the same paper[25] that "[t]he major effect of all IUDs is to induce a local inflammatory reaction in the uterine cavity."

Inflammation is "a condition of some part of the body that is a reaction to injury, infection, irritation, etc. and is characterized by varied combination of redness, pain, heat, swelling, and loss of function."[26] In other words, the toxic chemicals from the IUD will cause injury to the uterine cavity, preventing the fertilized egg or embryo from being implanted or, if implanted, from surviving. That is abortion resulting from the use of IUDs.

8. Significance of FDA's
"Don't-Use" Certification

Actually, Congress fears that hormonal contraceptives and IUDs perform a third function—disabling the endometrium of uterine lining-—that enable them to serve as weapons of abortion, Proof of this is that the RH Law provides in the third sentence of Section 9 that these contraceptives and devices may, assuming that they also function as abortifacients, pass FDA approval provided the latter issues a certification that they are "not to be used as abortifacient.." Thus:

> Sec. 9. x x x Any product or supply included or to be included in the EDI. must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.

The above of course makes no sense since the two functions go together and the user has no way, after taking the contraceptive, of stopping the second function from running its course. The bad simply comes with the good. The certification requirement violates the RH Law's tenet that "reproductive health rights do not include...access to abortifacients."[27] It also contradicts the

RH Law's stated policy of guaranteeing universal access to "non-abortifacient" contraceptives."[28] Above all, this position is in breach of the provision of the Constitution that outlaws abortion. In any event, I agree with the Court's ruling that the second sentence of Section 9 does not authorize the approval of family planning products and supplies that act as abortifacient.

This is not to say that all contraceptives and IUDs, present and future, double as abortifacients and are not to be allowed. Annulling Section 9 merely means that it is beyond the powers of Congress to legislate the safe and non-abortifacient status of certain forms of artificial contraceptives. That function must remain with the FDA which has the required scientific and technical skills for evaluating, testing, and approving each contraceptive before it is publicly made available. The manufacturers and distributors have their responsibilities, too. They have to warrant that their products do not function as abortifacients.

It is appalling, however, that Daphne, Trust Pill, and Yasmin that clearly function as abortifacient passed approval of the FDA. But this is a question that does not have to be answered here. The important thing is that the FDA is to assume as before the responsibility for preventing the violation of the law against abortion. It is of course difficult to be completely positive that a contraceptive primarily intended to prevent ovulation or fertilization of the ovum will absolutely not prevent implantation on the uterine wall and cause abortion. The lack of convincing empirical evidence that it is so may be an acceptable excuse. It is the certainty from the beginning, however, that a given contraceptive has the inherent and substantial potential for causing abortion that is not acceptable. It violates the constitutional right to life of the unborn.

Section 9 and
the Right to Health

Section 15, Article II, of the 1987 Constitution makes it the duty of the State to "protect and promote the right to health of the people." Health means physical and mental well-being; freedom from disease, pain, or defect; health means normalcy of physical functions.[29] Maternal health according to Section 4 of the RH Law refers to the health of a woman of reproductive age including, but not limited to, during pregnancy, childbirth and the postpartum period.

This means that women have the right to be free from government-sponsored sickness, government-sponsored pain, and government-sponsored defect. Since healthy vital organs of the body form part of the right to health, women have the right to have normally functioning vital organs. They have the right to walk in the park or in the malls free from debilitating illnesses and free from worries and fears over contraceptives that the government assures them are safe. The government cannot promote family planning programs that violate the women's right to health. A law that misleads women and states that hormonal contraceptives and IUDs are safe violates their constitutional right to health.

1. Safe or Unsafe Use of Hormonal

Contraceptives and IUDs

Since the law does not define the meaning of the term "safe," it is to be understood according to its common meaning: "free from harm, injury, or risk."[30] The RH Law itself recognizes that the use of contraceptives produces side effects or other harmful results. Thus, it directs the FDA in Section 19 to issue strict guidelines with respect to their use, acknowledging the need for abundant caution.

Do warnings of side effects and possible lasting harm make contraceptives and IUDs safe? The answer is of course no. For instance, a simple warning against pet snakes would say, "Look at this snake. It is a safe pet to keep in the house. But just don't keep it hungry. Don't forget to close the small door of the cage when you feed it. And watch those small kids."

It is the same with the warnings for hormonal contraceptives: "This is safe although you will have spotting, breakthrough bleeding, and prolonged periods. Don't worry. You will gain weight, loss your sexual urge, develop pimples, and breast tenderness. You may experience headache and dizziness as well as vaginal dryness. But that is quite alright. Incidentally, on occasions you may have liver disorders, clotting disorders, breast and cervical cancer, sickle-cell anemia, hormone-active tumors, hyperlipidemia, severe cardiovascular diseases, previous or existing thrombo embolic disease, and idiopathic jaundice. It is possible you will have a heart attack. I won't worry if I were you."

The dangers of those side effects are more worrisome since the RH Law fails to provide standards of safe use of contraceptives such as:

> (a) a prescribed standard of tolerance for side effects.
> (b) the service of a qualified physician who can advice the user, especially the poor, of the dangers of contraceptives, not just literature written in English so she can make intelligent choice;
> (c) the service of a qualified physician who will, while she is under contraceptives, monitor their effects on her, treat her for adverse side effects and complications, and provide her with the right medicine; and
> (d) the contraceptives she takes do not act at the same time as abortifacients in case an ovum is fertilized despite the use of such contraceptives.

The fact is that contraceptives interfere with normal body functions. Women have ovaries so these can produce ova or eggs that can be fertilized to ensure procreation and the continuation of the human race. Contraceptives prevent healthy ovaries from

ovulating, which is the reason for their being ovaries. One cannot disable the woman's ovaries or monkey with its functions .for long periods without affecting her health. Medical studies and reports show this to be the case.[31]

2. Drug's Side Effects
Versus Benefits

The OSG of course points out that, on balance, the side effects mentioned are outweighed like most medicines by the benefits that their use will bring. But that is a false analogy. Medicine is intended to cure illness. Consequently, the doctor can balance the illness that it wants to cure against the illness that its side effects bring. They are on the same level of exchange: a minor illness weighed against a major illness. For instance, the fact that medicine X may cause manageable problems in the patient's liver is outweighed by the fact that it can, more than any other medicine, hinder a fatal heart attack.

Obviously, this kind of balancing cannot apply to artificial contraceptives since the harm or illness they can cause users, especially women, is not on the same level of exchange as the consequent benefit, namely, sexual pleasure without pregnancy. Besides, other methods that produce no side effects exist. A WHO 2013 report that such methods have good results when used properly. Their rates of success under correct and consistent use are: male condoms 98%; withdrawal 96%; fertility awareness method 95-97%; and abstinence: 100%

This is not to say that contraceptives and IUDs can pass approval by the FDA only if they are absolutely safe. This is unrealistic and the Court must trust married couples and mature women to have the proper discernment for deciding whether to take the risk of their side effects. But the FDA should not trust the manufacturers and distributors with unbridled authority to write their own guidelines to users. It must see to it that these guidelines disclose those side effects in clear and understandable terms from the layman's point of view.

3. Substantive Due Process

The legislature's attempt to elevate into law its arbitrary finding that hormonal contraceptives and IUDs are safe and non-abortifacient is irrational. The determination of what medicine is safe and useful to a person is a function of the science of medicine and pharmacy. It is not for the Court or the legislature to determine. Raising present-day scientific or medical views regarding contraceptives to the level of law, when contested by opposing scientific or medical views, is an arbitraiy exercise of legislative power:

Medical and scientific findings are constantly changing. For example, the International Agency for Research on Cancer of the WHO reported that it was once believed that combined raenopausal therapy was "possibly carcinogenic to humans." But the WHO cancer research organization said in 2005 that "The new evaluation concluded, based on an expanded study base, that it is carcinogenic to humans [not just possibly carcinogenic], increasing a woman's risk of breast cancer." In fact, this research organization places oral contraceptives in the highest grade of cancer-producing products. Still, Congress would declare by force of law that oral contraceptives are safe. God save this country if it must rely and stake the lives of its people on Congressional judgment regarding scientific and medical truths.

Fortunately, the Court rules in this case that Congress cannot elevate into law its view that hormonal contraceptives and intrauterine devices are safe and non-abortifacient. The first sentence of Section 9 should be construed as ordaining their inclusion in the National Drug Formulary only after they have been tested, evaluated, and approved by the FDA. Only the FDA is competent to determine whether a particular hormonal contraceptive or intrauterine device is safe and non-abortifacient. This finds support in the second sentence of Section 9 that provides a process for the inclusion or removal of family planning supplies from the National Drug Formulary.

Section 7, Section 23(a)(3),
Section 23(a)(2), Section 23(b).
and the Free Exercise of Religion

Section 7 of the RH Law requires all public health facilities to provide the full range of family planning services. This is also required of private health facilities, except in the case of non-maternity specialty hospitals and those operated by religious groups. The latter hospitals are, however, required to immediately refer the person seeking such services to the nearest health care facility that will do the task. Thus, Section 7 provides:

> Section 7. *Access to Family Planning.* - All accredited public health facilities shall provide a full range of modem family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized cou ples having infertility issues who desire to have children: Provided, That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents. except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods; **Provided, further, That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible**: Provided, finally. That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344. (Emphasis supplied)

Related to the above is Section 23(a)(3) of the RH Law that makes it a crime for any health care service provider (hospital, clinic, doctor, nurse, midwife, and health worker),[32] whether public or private, to refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work.

The law provides, however, that the health care service provider's objection based on his or her ethical or religious beliefs is to be respected. Thus, he or she is not to be compelled to render the services that would interfere with the natural human reproduction process if the same conflicts with his conscience. This is consistent with Section 5, Article III of the 1987 Constitution which provides that no law shall be made prohibiting a person's free exercise of his religion.

But the irony of it is that at the next breath the RH Law would require the conscientious objector to immediately refer the person, whose wants he declines to serve, to the nearest health care service provider who will do what he would not. The penalty for failing to do this is imprisonment for 1 to 6 months or payment of a fine of PI 0,000 to PI 00,000 or both imprisonment and fine. If the offender is a juridical person, the penalty shall be imposed on its president or responsible officer.[33]

Specifically, Section 23(a)(3) provides:

> Section 23. *Prohibited Acts*. - The following acts are prohibited: (a) Any health care service provider, whether public or private, who shall;
>
> x x x x
>
> (3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: **Provided, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible:** x x x

Section 23(a)(3) makes no sense. It recognizes the constitutional right of the conscientious objector not to provide artificial contraceptives that he believes would kill the unborn after it has been conceived. Yet, he must help see it done by someone else. For instance, the Catholic religion might consider it a sin similar to murder to implant a copper IUD into a woman since it would kill the unborn by preventing it from attaching to a womb atrophied by poison from the IUD. The RH law respects the Catholic doctor's right to refuse to do what his faith regards as murder. But he must hasten, at the pain of punishment, to refer the woman to another doctor who is willing to do it.

So if the law would excuse the Catholic doctor from committing what in his faith amounts to murder, would it be reasonable for the law to compel him to help the woman and show her how she can have her child murdered by another doctor? If so, the Catholic doctor would in effect say to the other doctor, "I can't murder this woman's child but please do it in my place." This definitely compels him to do something against his conscience in violation of his constitutional right to the free exercise of his religion.

The OSG cites the *Ebralinag* case[34] concerning students who were members of the Jehovah's witnesses. They refused to salute the flag and for this reason were expelled from school. But the Court said that compelling them to salute the flag would violate their religious belief that salutes are reserved to-God. It is the same here in the sense that the RH law actually recognizes the right of a Catholic doctor not to be compelled to implant a copper IUD into a woman's womb because it amounts, according to his religious belief, to the murder of an unborn child. The Constitution and the law respect's the doctor's religious belief.

Of course, as the OSG points out, school authorities are not powerless to discipline Jehovah's witnesses' members if they commit breaches of the peace by disruptive actions that would prevent others, like their classmates and teachers, from peacefully saluting the flag and singing the national anthem. The OSG implies from this that while the RH Law can similarly respect the conscientious objector's right not to do what his religion forbids, it can compel him help the person get the declined service from another health care service provider.

But it is clear from *Ebralinag* that what is required of the Jehovah's witnesses is to respect the right of other students and their teachers by-keeping quiet and not disrupting the flag ceremony. Keep quiet and let alone; that is the rule. In the case of the Catholic doctor, he should do nothing to impose his religious belief on the woman. He should do nothing that will deny the woman her right to get that copper IUD implantation elsewhere. Like the Jehovah's witnesses, the equivalent conduct for the Catholic doctor is to keep quiet and let alone.

Unfortunately, the RH Law requires him to take steps to ensure that the woman is pointed to another place where she could get the IUD implantation she wants. In effect, the law compels the doctor to do more than just keep quiet and let alone It compels him at the pains of going to jail to get involved and help in the commission of what his religious belief regards as amounting to the murder of a child. And this is in order to satisfy the need of the woman and her partner for sex without pregnancy. Remember,

this is not the case of a bleeding woman needing immediate medical attention.

The Court has correctly decided to annul Section 23(a)(3) and the corresponding provision in the RH-IRR, particularly section 5.24, as unconstitutional insofar as they punish any health care provider who fails and/or refuses to refer a patient not, in an emergency or life-threatening case, to another health care service provider within the same facility or one which is conveniently accessible regardless of his or her religious beliefs.

Section 23(a)(l) and the
Principle of Void for Vagueness

Due process demands that the terms of a penal statute must be sufficiently clear to inform those who may be subjected to it what conduct will render them liable to its penalties. A criminal statute that "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute," or is so indefinite that "it encourages arbitrary and erratic arrests and convictions," is void for vagueness. A vague or indefinite statute is unconstitutional because it places the accused on trial for an offense, the nature of which he is given no fair warning.[35]

Section 23(a)(l) of the RH Law provides:

> Section 23. *Prohibited Acts.* -The following acts are prohibited: (a) Any health care service provider, whether public or private, who shall:
>
> > (1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a fufl range of legal, medically-safe, non-abortifacient and effective family planning methods;

The public health care service provider referred to are of course the hospitals, the doctors, the nurses, the midwives, and the other health workers described elsewhere in the law.[36] They will, if found guilty of the offense, suffer imprisonment of 1 to 6 months or a fine of PI0,000 to PI00,000 or both imprisonment and fine.[37]

Petitioners contend that Section 23(a)(l) above is void for vagueness. But some points out that the term "knowingly" used in the law, assailed by petitioners as vague, is sufficiently clear in that it means awareness or deliberateness that is intentional and connotes malice.

But "knowingly" and "maliciously" have meanings that set them apart. "Knowingly" means mere awareness or deliberateness. "Maliciously," on the other hand, connotes an "evil intention."[38] If the law meant to include malice as an ingredient of the offense described in Section 23(a)(l), it would have added the term "maliciously" to "knowingly." Nothing in the wordings of the law implies malice and the need for criminal intent. The crime as described is *malum prohibition*.

The term "knowingly" is vague in the context of the law because it does not say how much information the offender must have regarding those programs and services as to charge with an obligation to impart it to others and be penalized if he "knowingly" fails to do so. The depth of a person's information about anything varies with the circumstances.

One who is running the programs or sendees would naturally have the kind of information that obligates him to disclose them to those who seek the same and be punished if he "knowingly" refuses to do so. Yet, this circumstance of direct involvement in the program or sendee is not required in Section 23(a)(l). On the other hand, one who merely reads about those programs and services, like a private hospital nurse who receives a letter offering free program on birth control, would know little of the detailed contents of that program and the competence of those who will run it. But since the law also fails to state what the term "information" means, that private nurse could be charged with "knowingly" withholding information about the birth control program she learned from reading mails if she does not disseminate it to others.

Another element of the offense is that the health care service provider must knowingly withhold or restrict dissemination of the information that he has. It fails to state, however, to whom he has an obligation to make a disclosure. It also gives him no discretion to decide to whom such information would be suitable and to whom not. Consequently, the health care service provider would be vulnerable to charges of violation of the law where he is denied the chance to know before hand when the obligation to disclose presents itself.

Section 23(a)(l) and
the Freedom of Expression

Section 23(a)(l) also punishes any health care service provider who knowingly provides "incorrect" information regarding programs and services on reproductive health. But the RH Law does not define what is "correct" or "incorrect" information regarding such programs and services. And it does not require the publication of what information are "correct" and what are "incorrect" sufficient to put prospective offenders on guard.

Besides there is no final arbiter in the world over issues concerning correct or incorrect reproductive health science on which reproductive health programs and services must depend. For instance, while Section 9 regards as law the scientific proposition that hormonal contraceptives and IUDs are safe and non-abortifacient, there is abundant medical and scientific evidence, some from the WHO itself that they are not.

If the legislature can dictate what the truth is regarding medical and scientific issues of the day and send to jail those who disagree with it, this country would be -in deep trouble. They threw Galileo into jail for saying that the earth was round when the authorities of his time believed that it was flat. Public health will be endangered if Congress can legislate a debatable scientific or medical proposition into a binding law and punish all dissenters, depriving them of their freedom of expression.

Most competent doctors read the latest in scientific and medical journals and reports. If these convince a doctor that oral pills and copper IUDs are not safe or work as abortifacient, he would be unable to tell his patients these until the law is repealed. Otherwise, he would be giving them "incorrect" information that would send him to jail. This places a health issue affecting public interest outside the scope of scientific and medical investigation.

The doctors who make up the Universal Health Care Study Group, on whose paper Congress relied on, hold the view that the life of the unborn child begins only from the moment of implantation of the embryo on the uterine wall, contrary to what the Constitution provides. This means that if they provide such "incorrect" information to their patients, they could go to jail for it. But no law should be passed outlawing medical or scientific views that take exceptions from current beliefs.

Moreover, the State guarantees under Section 2 of the RH Law the right of every woman to consider all available reproductive health options when making her decision. This implies that she has the right to seek advice from anyone she trusts. Consequently, if a woman wanting to space her pregnancy seeks the advice of a Catholic physician she trusts, the latter should not be sent to jail for expressing his belief that taking oral pills or using copper IUDs can cause abortion that her faith prohibits. This is valid even if others do not share the faith. Religious conscience is precisely a part of the consideration for free choice in family planning.

I concede, however, that my above views on Section 23(a)(l) could be better appreciated in actual cases involving its application rather than in the present case where I go by the bare provisions of the law. For now I am satisfied that Section 23(a)(l) has been declared void and unconstitutional insofar as it punishes any health care provider who fails or refuses to disseminate information regarding programs and services on reproductive health regardless of his or her religious beliefs.

---

[1] Section 3(c), Republic Act 10354.

[2] World Population Prospects: 2008 revision, (n.d.) United Nations, Department of Economics and Social Affairs.

[3] The Philippine Star. July 15, 2013.

[4] Conception & Pregnancy: Ovulation, Fertilization, and More, httpr/webmd.com/baby/guide/understar-Jing-conception, last uploaded 8/1/2013 12:05 pm.

[5] Webster's Third New International Dictionary. 1993 Edition.

[6] Sadler. T.W. Langman's Medical Embryology 11th Ed 2010, Lippincott Williams and Wilkins.

[7] WebMD Medical Reference from Healthwise, citing Grimes DA (2007). Intrauterine devicds (IUDs). In RA Hatcher et al., eds., Contraceptive Technology, 19th ed., pp. 117-143. New York: Ardent Media.

[8] WHO Expert Opinion dated November 7, 2006, Annex 1 of OSG Comment, p. 4.

[9] Section 12, Article II, 1987 Constitution of the Philippines.

[10] Section 4, Republic Act 10354.

[11] The Gurtmacher Institute (2005), citing the American College of Obstetricians and Gygnecologists.

[12] Textbook of Contraceptive Practice of Cambridge (Cambridge University Press).

[13] WHO October 27, 2010 position paper, Note 7, p. 3.

[14] Webster's New World Dictionary. 3rd Edition, pp. 448 (endometrium) and 1470 (uterus).

[15] Webster's Third New International Dictionary, p. 1117.

[16] U.S. Physicians Drug Reference, 1978, p. 1817; 1997, p. 2746.

[17] WHO November 7,2006 Expert Opinion, Note 7, Annex_____ , p. 3.

[18] WHO position paper of October 27, 2010. id., Annex _, p. 2.

[19] WHO Expert Opinion dated November 7. 2006, Note 7. Annex __ , p. 3.

[20] WHO January 17, 2011 Response to Queries, Note 7, Annex_____ . p. 3.

[21] http://inonographs.iare.fr/ENG/Monographs/von00A-19.pdf. Retrieved October 3, 2012. "

[22] S ection 2. Rule 3 29 of the Rules of Evidence.

[23] Sulit.com.ph, 2012.

[24] WHO November 7, 2006 Expert Opinion Id. Annex _____, pp. 3-4.

[25] At p. 3.

[26] Webster's "New World College Dictionary, 3rd edition, p. 692.

[27] Section 4 (s). Id.

[28] Section 2, RH Law.

[20] Note 2, p. 621.

[30] Note 10. p, 1998.

[31] Heinemann, Lothar A .J; Lewis, Michael Aar_button.gif: Thorogood, margaret1 _#$@%!#_ar_button gif; Spitzer, Walter O.; et al. British Medical Journal, International editionspacer.gif; 315.7121.1_#$@%#_spacer.gif: (December 6. 1997): 1502-4.

[32] See Section 4 Definition of Terms; par. (n) meaning of term "public health care service provider."

[33] Section 24, RH Law.

[34] *Ebralinag v. The Division Superintendent of School of Cebu,* GR. No. 95770, 219 SCRA 256.

[35] *People v, dela Piedra*, G.R. No. 121777, January 24, 2001, 350 SCRA 163.

[36] See Section 4 Definition of Terms; par, (n) meaning of term "public health care service provider."

[37] Section 24, RH Law.

[38] Webster's Third New International Dictionary, p. 1367.

CONCURRING AND DISSENTING OPINION

REYES, *J.*:

I concur with the *ponencia's* declaration that Republic Act (R.A.) No. 10354, otherwise known as the Responsible Parenthood and Reproductive Health Act of 2012, perused in its entirety, is not recusant of the various rights enshrined in our Constitution. Particularly, I concur that: (1) R.A. No. 10354, m making contraceptives and other reproductive health products and services

more accessible, does not run counter to the constitutional right to life; (2) R.A. No. 10354, in giving priority to the poor in the implementation of gove1nment programs to promote basic reproductive health care, does not violate the equal protection clause of the Constitution; (3) Section 9,[1] in mandating the inclusion of family planning products and supplies in the Philippine National Drug Formulary System, does not violate the right to health of the people; (4) Section 15[2] is not anathema to freedom of religion; (5) Section 17[3] does not amount to involuntary servitude; (6) the delegation by Congress to the Food and Drug Administration (FDA) of the power to determine whether a supply or product is to be included in the Essential Drugs List constitutes permissible delegation of legislative powers; and (7) Sections 5,[4] 6,[5] and 16[6] do not amount to an encroachment on the autonomy of local governments.

The *ponencia* declared Section 7, insofar as it dispensed with the requirement of written parental consent for minors who are already parents or have had a miscarriage, with regard to access to modem methods of family planning, unconstitutional as it infringes on the right to privacy with respect to one's family. I agree that Section 7, **inasmuch as it dispensed with the requirement of parental consent**, is unconstitutional. Nevertheless, in addition to ponencia's ratiocination on the right to privacy, I would discuss further that Section 7, by dispensing with the requirement of parental consent for minors in certain cases, violates Section 12, Article II of the 1987 Constitution.

I agree with the *ponencia's* conclusion that the attack on the constitutionality of Section 14, which provides for age- and development appropriate reproductive health education to adolescents, must fail. However, I disagree with the *ponencia* insofar as it declared that the issues raised against the constitutionality of Section 14 are premature as the Department of Education (DepEd) has yet to prepare a curriculum on age and development-appropriate reproductive health education. The Court has already made pronouncements on the constitutionality of the other provisions of R.A. No. 10354 despite the lack of an actual case or controversy, the issues presented being matters of transcendental importance. There is thus no reason for the Court to avoid a definitive ruling on the constitutionality of Section 14. It is my view, which I will expound later, that Section 14 does not: (1) violate the academic freedom of educational institutions; (2) intrude into the natural and primary right of parents to rear their children; and (3) amount to an infringement of the freedom of religion.

I dissent, however, from the *ponencia's* conclusion that the following provisions ofR.A. No. 10354 are unconstitutional:

(1) Section 7, insofar as it imposes on non-maternity specialty hospitals and hospitals owned and operated by a religious group the duty to refer a person seeking access to modem family planning methods to another health facility, for being violative of the freedom of religion;
(2) Section 23(a)(l), which punishes any health care service provider who withholds information or restricts the dissemination thereof regarding programs and services on reproductive health, and Section 23(a)(2), which punishes any health care service providers who refuse to perform reproductive health procedures on the ground of lack of consent or authorization in certain cases, for being violative of the freedom of religion;
(3) Section 23(a)(2)(i), which allows a married individual to undergo reproductive health procedure *sans* the consent of his/her spouse, for being contrary to one's right to privacy;
(4) Section 23(a)(3), insofar as it requires a conscientious objector to immediately refer a person seeking reproductive health care and service to another health care service provider, for being violative of the freedom of religion;
(5) Section 23(b), which punishes any public officer charged with the duty to implement the provision of R.A. No. 10354 who prohibits or restricts the delivery of reproductive health care services, and Section 5.24 of the Implementing Rules and Regulations (IRR) of R.A. No. 10354, which, *inter alia,* provides that those charged with the duty to implement the provisions of R.A. No. 10354 cannot be considered as conscientious objectors, for being violative of the freedom of religion; and
(6) Section 17, insofar as it included the rendition of at least fortyeight (48) hours annual *pro bono* reproductive health services as a prerequisite in the accreditation under PhilHealth.

Section 7, inasmuch as it dispenses with the requirement of written parental consent, violates Section 12, Article II of the Constitution.

Parents have the natural and primary right and duty to nurture their children. This right is recognized by Section 12, Article II of the Constitution, which pertinently provides that:

> Section 12. x x x The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Concomitant to their natural and primary right and duty to provide for, care, and nurture their children, parents exercise parental authority over the persons of their unemancipated children. In this regard, Article 209 of the Family Code[7] provides that:

> Article 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, **parental authority and responsibility shall include** the caring for and rearing them for civic consciousness

> and efficiency and the **development of their moral, mental and physical character and well-being**. (Emphasis ours)

The authority that is exercised by parents over their unemancipated children includes the right and duty to enhance, protect, preserve, and maintain their physical and mental health and to represent them in all matters affecting their interests.[8] The authority exercised by parents over their unemancipated children is terminated, *inter alia,* upon emancipation of the child.[9] Emancipation takes place upon attainment of the age of majority, which commences at the age of eighteen years.[10]

Section 7 of R.A. No. 10354 pertinently provides that:

> Section 7. *Access to Family Planning.* - All accredited public health facilities shall provide a full range of modem family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children: *Provided,* That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods: *Provided, further,* That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible: Provided, finally, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344.
>
> No person shall be denied information and access to family planning services, whether natural or artificial: *Provided,* That minors will not be allowed access to modern methods of family planning without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage.

Section 7 seeks to make modem family planning methods more accessible to the public. The provision mandates that no person shall be denied information and access to family planning services, whether natural or artificial. However, the last *proviso* of Section 7 restricts the access of minors to modem methods of family planning; it requires a written parental consent before a minor may be allowed access thereto. This is but recognition of the parental authority that is exercised by parents over the persons of their unemancipated children. That it is both a duty and a right of the parents to protect the physical health of their unemancipated children.

However, Section 7 provided an exception to the requirement of written parental consent for minors. A minor who is already a parent or has had a miscarriage may be allowed access to modem methods of family planning notwithstanding the absence of a written parental consent therefor. This runs afoul of the natural and primary right and duty of parents in the rearing of their children, which, under Section 12, Article II of the Constitution, should receive the support of the government.

There exists no substantial distinction as between a minor who 1s already a parent or has had a miscarriage and a minor who is not yet a parent or never had a miscarriage. There is no cogent reason to require a written parental consent for a minor who seeks access to modem family planning methods and dispense with such requirement if the minor is already a parent or has had a miscarriage. Under the Family Code, all minors, generally, regardless of his/her circumstances, are still covered by the parental authority exercised by their parents. That a minor is already a parent or has had a miscarriage does not operate to divest his/her parents of their parental authority; such circumstances do not emancipate a minor.

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder.[11] Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments.[12]

Considering that the last *proviso* of Section 7 operates to divest parents of their parental authority over the persons of their minor child who is already a parent or has had a miscarriage, the same must be struck down for being contrary to the natural and primary right and duty of parents under Section 12, Article II of the Constitution.

Section 14 does not violate the academic freedom of educational institutions nor infringe on the natural and primary right and duty of parents to rear their children.

Section 14[13] of R.A. No. 10354 mandates the provision of age- and development-appropriate reproductive health education, which would be taught to adolescents[14] in public schools by adequately trained teachers. The curriculum on age- and development-appropriate reproductive health education, which shall be formulated by the DepEd after consultation with parents-teachers-community associations, shall include subjects such as: values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage

behavior; gender and development; and responsible parenthood.

The petitioners claim that Section 14, by mandating the inclusion of age- and development-appropriate reproductive health education to adolescents, violates the academic freedom of educational institutions since they will be compelled to include in their curriculum a subject, which, based on their religious beliefs, should not be taught to students.[15]

The petitioners' claim is utterly baseless. Section 5(2), Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. The institutional academic freedom includes the right of the school or college to decide and adopt its aims and objectives, and to determine how these objections can best be attained, free from outside coercion or interference, save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term "academic freedom" encompass the freedom of the school or college to determine for itself: (1) who may teach; (2) what may be taught; (3) how lessons shall be taught; and (4) who may be admitted to study.[16]

An analysis of the foregoing claim requires a dichotomy between public and private educational institutions. The last sentence of Section 14 provides that the age- and development-appropriate reproductive health curriculum that would be formulated by the DepEd "shall be used by public schools and **may be adopted** by private schools." The mandated reproductive health education would only be compulsory for public schools. Thus, as regards private educational institutions, there being no compulsion, their constitutional right to academic freedom is not thereby violated.

As regards public educational institutions, though they are mandatorily required to adopt an age- and development-appropriate reproductive health education curriculum, the claimed curtailment of academic freedom is still untenable. Section 4(1), Article XIV of the Constitution provides that "[t]he State x x x shall exercise reasonable supervision and regulation of all educational institutions." The constitutional grant of academic freedom does not withdraw from the State the power to supervise and regulate educational institutions, whether public or private. The only requirement imposed by the Constitution on the State's supervision and regulation of educational institutions is that the exercise thereof must be reasonable.

Congress deemed it appropriate to include a provision on age- and development-appropriate reproductive health education as a means to address the rise of teenage pregnancies.[17] In a 2002 survey conducted by the University of the Philippines Population Institute, it was shown that 23% of young people aged 15 to 24 years old had already engaged in pre-marital sex; that pre-marital sex was prevalent among 31.1% of the boys and 15.4°/o among the girls.[18] The survey, after a consideration of other factors, concluded that many young people, despite having inadequate knowledge on reproductive health problems, engage in risky sexual behavior.[19] That, despite having liberal views on sex and related matters, they rarely seek medical help for reproductive health problems.[20] Poignantly, given this factual milieu, the provision on age- and development-appropriate reproductive health education under Section 14 is reasonable.

The importance of integrating the subject of the dangers and dire consequences of alcohol abuse or even the menace of dangerous drugs in the curricula of primary and secondary educational institutions cannot be disputed. The prevalence of teenage pregnancy and the risks surrounding it is just as equally alarming as the dangers of alcohol and substance abuse. Accordingly, I find nothing objectionable in the integration of age- and development-appropriate reproductive health education in the curricula of primary and secondary schools.

The petitioners further assert that Section 14 violates the right to privacy of the parents as it amounts to a denigration of "the sanctity of the family home" and has "usurped the rights and duties of parents to rear and educate their children in accordance with their religious conviction by forcing some rules and State programs for reproductive health contrary to their religious beliefs." The petitioners claim that parents have the primary duty to educate their children, especially on matters affecting reproductive health. They thus allege that the State's interference in such a delicate parental task is unwarranted and should not be countenanced.

It is conceded that parents, as stated earlier, indeed have the natural and primary right and duty in the rearing of their children.[21] The Constitution further affirms such right and duty by mandating that the State, in providing compulsory elementary education for all children of school age, is proscribed from imposing a limitation on the natural rights of parents to rear their children.[22] At the core of the foregoing constitutional guarantees is the right to privacy of the parents in the rearing of their children.

Essentially, the question that has to be resolved is whether the inclusion of age- and development-appropriate reproductive health education in the curriculum of primary and secondary schools violates the right to privacy of the parents in the rearing of their children. The standard to be used in determining the validity of a government regulation, which is claimed to infringe the right to privacy of the people, was explained by the United States (US) Supreme Court in the land mark case of *Griswold v. Connecticut*[23] in this wise:

> The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, **that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be**

> **achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.**[24] (Emphasis ours)

Thus, when a government regulation is claimed to infringe on the right to privacy, courts are required to weigh the State's objective against the privacy rights of the people. Although considered a fundamental right, the right to privacy may nevertheless succumb to a narrowly drawn government regulation, which advances a legitimate and overriding State interest.[25]

As explained earlier, Section 14 aims to address the increasing rate of teenage pregnancies in the country and the risks arising therefrom, which is undeniably a legitimate and overriding State interest. The question that has to be asked then is whether Section 14, in advancing such legitimate and overriding State interest, has employed means, which are narrowly tailored so as not to intrude into the right to privacy of the people.

Under Section 14, the formulation of the curriculum on age- and development-appropriate reproductive health education is a collaborative process. It provides "[t]hat flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed **only after consultations with parents-teachers community associations, school officials and other interest groups.**" Section 14 thus takes into account the relevant concerns of parents and other interest groups in the adoption and implementation of the proposed age- and development-appropriate reproductive health education; any and all objections thereto based on religious beliefs would be considered during the formulation of the curriculum. In this sense, Section 14, in taking into account the relevant concerns of parents and other interest groups in the formulation of the curriculum, has been narrowly tailored so as not to invade the right to privacy of the parents.

Equally untenable is the petitioners' claim that the provision of age and development-appropriate reproductive health education under Section 14 unduly burdens their freedom of religion.[26] A similar claim was resolved by the *Supreme Court of Hawaii in Medeiros v. Kiyosaki*.[27] In Medeiros, Hawaii's Department of Education, as part of its family life and sex education program, exhibits a film series entitled "Time of Your Life" to fifth and sixth grade students in public schools. The plaintiffs therein, parents and guardians of fifth and sixth grade students, sought to enjoin the exhibition of the said film series, claiming, inter alia, that the said program unduly interferes with their religious freedom.

The Supreme Court of Hawaii held that the Department of Education's family life and sex education program does not infringe on the religious freedom of the plaintiffs therein. Relying on the case of *Epperson v. Arkansas*,[28] the Supreme Court of Hawaii stressed that upholding the claim of the plaintiffs therein would amount to tailoring the teaching and learning in their schools to the principles or prohibitions of a religious sect, which is anathema to the non-establishment clause.

Epperson involves a challenge to the constitutionality of the "anti evolution" statute adopted by the State of Arkansas in 1928, which makes it unlawful for a teacher in any State-supported school or university to teach the theory or doctrine that mankind ascended or descended from a lower order of animals, or to adopt or use in any such institution a textbook that teaches this theory. In declaring the statute unconstitutional, the US Supreme Court declared that:

> Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion, and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. **The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.**
>
> **As early as 1872, this Court said: "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."** *Watson v. Jones*, 13 Wall. 679, 80 U.S. 728. This has been the interpretation of the great First Amendment which this Court has applied in the many and subtle problems which the ferment of our national life has presented for decision within the Amendment's broad command.
>
> xxxx
>
> **There is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma**. In *Everson v. Board of Education,* this Court, in upholding a state law to provide free bus service to school children, including those attending parochial schools, said: "Neither [a] State nor the Federal Government can pass laws which aid one religion, aid all religions, or prefer one religion over another." 330 U.S. 1, 330 U.S. 15 (1947)[29] (Emphasis ours)

Declaring the provision of an age- and development-appropriate reproductive health education to primary and secondary students unconstitutional on the pretext that it conflicts with the religious convictions of others would amount to an endorsement of religion contrary to the non-establishment clause.[30] The petitioners' claimed infringement of their religious freedom is flawed in two ways: *first*, Section 14 takes into account the religious beliefs of parents by soliciting their participation in the formulation of the curriculum on age- and development-appropriate reproductive health education; and *second*, to permit the petitioners to control what others may study because the subject may be offensive to their religious or moral scruples would violate the non-establishment clause.[31]

The "duty to refer" under Sections 7 and 23(a)(3) does not restrict the freedom of religion.

The *ponencia* declared that the "duty to refer" imposed by Sections 7 and 23(a)(3) of R.A. No. 10354 is repugnant to the constitutional right to freedom of religion and, thus, should be struck down as unconstitutional. The *ponencia* explained that "[o]nee the medical practitioner, against his will, refers a patient seeking information on modem reproductive health products, services, procedures and methods, his conscience is immediately burdened as he has been compelled to perform an act against his beliefs." The *ponencia* further described the said "duty to refer" as "a false compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive."

I do not agree.

In order to properly assess the constitutionality of Sections 7 and 23(a)(3), the provisions thereof must be considered in its entirety. Judicial scrutiny of the subject provisions cannot be delimited to a particular provision thereof, *i.e.*, the "duty to refer," lest the Court lose sight of the objectives sought to be achieved by Congress and the ramifications thereof with regard to the free exercise clause. The "duty to refer" must be construed with due regard to the other provisions in Sections 7 and 23(a)(3) and the objectives sought to be achieved by R.A. No. 10354 in its entirety.

The Constitution guarantees that no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof; that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.[32] Religious freedom forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship, and conversely, it safeguards the free exercise of the chosen form of religion.[33]

The twin clauses of free exercise clause and non-establishment clause express an underlying relational concept of separation between religion and secular government.[34] The idea advocated by the principle of separation of church and State is to delineate the boundaries between the two institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. While the State is prohibited from interfering in purely ecclesiastical affairs, the Church is likewise barred from meddling in purely secular matters.[35]

Freedom of religion embraces two aspects - freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be.[36] The free exercise clause does not unconditionally inhibit the State from requiring the performance of an act, or the omission thereof, on religious pretenses.[37] Religious freedom, like all other rights in the Constitution, can be enjoyed only with a proper regard for the rights of others.[38] It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare.[39]

Nonetheless, the State, in prescribing regulations with regard to health, morals, peace, education, good order or safety, and general welfare of the people, must give due deference to the free exercise clause; it must ensure that its regulation would not invidiously interfere with the religious freedom of the people. In such cases, the legitimate secular objectives of the State in promoting the general welfare of the people must be assessed against the religious scruples of the people.

In *Estrada v. Escritor,*[40] the Court held that the standard of benevolent neutrality "is the lens with which the Court ought to view religion clause cases[.]"[41] The Court explained the benevolent neutrality/ accommodation standard in this wise:

> With religion looked upon with benevolence and not hostility, ***benevolent neutrality*** **allows *accommodation* of religion under certain circumstances. Accommodations are government policies that take religion specifically into account** not to promote the government's favored form of religion, but **to *allow individuals and groups to exercise their religion without hindrance.*** Their purpose or effect therefore is to remove a burden on, or facilitate the exercise of a person's or institution's religion. As Justice Brennan explained, the "government [may] take religion into account . . . ***to exempt, when possible, from generally applicable governmental regulation*** **individuals whose religious beliefs and practices would othenvise thereby be infringed**, or to create without state involvement an atmosphere in which voluntary religious exercise may flourish." x x x Accomodation is forbearance and not alliance. It does not reflect *agreement* with the minority, but respect for the conflict between the temporal and spiritual authority in which the minority finds itself.[42] (Emphasis ours and citations omitted)

In ascertaining the limits of the exercise of religious freedom, in cases where government regulations collide with the free exercise clause, the Court further declared that, following the benevolent neutrality/accommodation standard, the "compelling state interest" test should be applied.[43] Under the "compelling state interest test," a State regulation, which is challenged as being contrary to the free exercise clause, would only be upheld upon showing that: (1) the regulation does not infringe on an individual's constitutional right of free exercise; or (2) any incidental burden on the free exercise of an individual's religion maybe justified by a compelling state interest in the regulation of a subject within the State's constitutional power to regulate by means,

which imposed the least burden on religious practices.[44]

With the foregoing principles in mind, it is my view that Sections 7 and 23(a)(3) of R.A. No. 10354 does not run afoul of religious freedom. On the contrary, the said provisions explicitly recognize the religious freedom of conscientious objectors by granting accommodation to their religious scruples.

The right to health is a universally recognized human right.[45] In this regard, the Constitution mandates the State to "protect and promote the right to health of the people and instill health consciousness among them."[46] The Constitution further requires the State to "adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost;" that in the provision of health care service to the people, the needs of the underprivileged, sick, elderly, disabled, women, and children should be prioritized.[47]

Heeding the constitutional mandate to protect and promote the right to health of the people, Congress enacted R.A. No. 10354. Section 2 of R.A. No. 10354 thus pertinently states that:

> Section 2. *Declaration of Policy.* - The State **recognizes and guarantees the human rights of all persons including** their right to equality and nondiscrimination of these rights, the right to sustainable human development, **the right to health which includes reproductive health**, the right to education and information, and the right to choose and make decisions for themselves in accordance with their religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood.
>
> x x x x (Emphasis ours)

Particularly, R.A. No. 10354 seeks to provide "effective and quality reproductive health care services and supplies,"[48] which would "ensure maternal and child health, the health of the unborn, safe delivery and birth of healthy children, and sound replacement rate, in line with the State's duty to promote the right to health, responsible parenthood, social justice and full human development."[49] R.A. No. 10354, as a corollary measure for the protection of the right to health of the people, likewise recognizes necessity to "promote and provide information and access, without bias, to all methods of family planning."[50] Primarily, the objective of R.A. No. 10354 is to provide marginalized sectors of society, particularly the women and the poor, access to reproductive health care services, and to health care in general, of which they have been deprived for many decades due to discrimination and lack of access to information.[51]

Sections 7 and 23(a)(3) effectuate the foregoing objectives that R.A. No. 10354 seeks to attain. Section 7, as stated earlier, facilitates the access by the public, especially the poor and marginalized couples having infertility issues desiring to have children, to modem family planning methods. It thus mandates all accredited public health facilities to provide a full range of modem family planning methods, which includes medical consultations, supplies and procedures. Private health facilities are likewise required to extend family planning services to paying patients.

On the other hand, Section 23(a)(3) penalizes the refusal of any health care service provider to extend quality reproductive health care services and information on account of the patient's marital status, gender, age, religious convictions, personal circumstances, or nature of work. Thus:

> Section 23. *Prohibited Acts.*- The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> > xxxx
> >
> > (3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: ***Provided*, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible:** *Provided, further,* That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases;
> >
> > x x x x (Emphasis ours)

Nevertheless, although Section 7 provides "that family planning services shall likewise be extended by private health facilities to paying patients," it nevertheless exempts "non-maternity specialty hospitals and **hospitals owned and operated by a religious group**" from providing full range of modem family planning methods. Instead, Section 7 imposes on non-maternity specialty

hospitals and hospitals owned and operated by a religious group the duty to immediately refer patients seeking reproductive health care and services to another health facility that is conveniently accessible.

In the same manner, the prohibition imposed under Section 23(a)(3) is not absolute; it recognizes that a health care service provider may validly refuse to render reproductive health services and information if he/she conscientiously objects thereto "based on his/her ethical or religious beliefs." Nevertheless, Section 23(a)(3) likewise imposes a corresponding duty on such conscientious objector to immediately refer the person seeking reproductive health services to another health care service provider within the same facility or one, which is conveniently accessible.

It cannot be denied that the State has a legitimate interest in the promotion and protection of the right to reproductive health of the people. The question that has to be resolved then is whether such interest can be considered compelling as to justify any incidental burden on the free exercise of religion.

The determination of whether there exists a compelling state interest that would justify an incidental burden involves balancing the interest of the State against religious liberty to determine which is more compelling under the particular set of facts. In assessing the state interest, the court will have to determine the importance of the secular interest and the extent to which that interest will be impaired by an exemption for the religious practice.[52]

Accordingly, the supposed burden on the religious freedom of conscientious objectors in complying with the "duty to refer" would have to be weighed against the State's interest in promoting the right of the people to reproductive health.

According to the 2010 State of World Population prepared by the United Nations Population Fund, in the Philippines, 230 mothers die out of every 100,000 live births while 21 infants die out of every 1,000 live births.[53] Daily, there are about 15 women dying due to childbirth and pregnancy related complications.[54] About 11% of all deaths among women of reproductive age in the Philippines are due to maternal death.[55] Further, for every minute, 3 babies are born, and for every 1000 babies born, 33 die before reaching age five. [56] The foregoing statistics paints a harrowing tale of the state of the country's reproductive health. It is quite unfortunate that the country has a high rate of maternal and infant deaths, when it can be significantly reduced with proper and effective reproductive health care.

No less distressing is the state of unintended pregnancies, and its equally harrowing consequences, in the country. According to a study prepared by the Alan Guttmacher Institute (AGI), there were 1.9 million unintended pregnancies in the Philippines in 2008, resulting in two main outcomes-unplanned births and unsafe abortions. In the Philippines, 37% of all births are either not wanted at the time of pregnancy (mistimed) or entirely unwanted, and 54% of all pregnancies are unintended. The AGI further discovered that, on average, Filipino women give birth to more children than they want, which is particularly striking among the poorest Filipino women, who have nearly two children more than they intend to have.[57]

The AGI stressed that the foregoing statistics can be attributed to low contraceptive use and high levels of unmet need for contraception. The AGI pointed out that in 2008, more than 90% of unintended pregnancies occurred among women using traditional, ineffective methods or no method at all. The study further showed that poor women are less likely to use a contraceptive method than non-poor women (43% vs. 51%), and in regions where poverty is common, contraceptive use is substantially lower than the national average--*e.g.*, 38% in the Zamboanga Peninsula and 24% in the Autonomous Region in Muslim Mindanao. [58]

The present condition of the country's reproductive health care, taken together with the Constitution's mandate to promote and protect the right to health of the people, constitutes a compelling state interest as would justify an incidental burden on the religious freedom of conscientious objectors. Sections 7 and 23(a)(3) of R.A. No. 10354 were crafted to ensure that the government's effort in disseminating information and providing access to services and programs on reproductive health would not be stymied. The said provisions seek to improve the condition of the reproductive health care in the country.

Nevertheless, Congress recognized that, in enacting regulations to further the reproductive health of the people, including access to modem family planning methods, resistance thereto based on religious scruples would abound. Notwithstanding the presence of a compelling state interest in the promotion and protection of reproductive health, Congress deemed it proper to carve out exemptions that specifically take into account the religious dissensions of conscientious objectors, which effectively exempts them from the requirements imposed under Sections 7 and 23(a)(3). In this regard, it cannot thus be claimed that the said provisions invidiously interfere with the free exercise of religion.

Nevertheless, it cannot be denied that the government's effort to provide increased access to information, programs, and services regarding reproductive health would be seriously hampered by the exemption accorded to conscientious objectors. A considerable number of health facilities in the country are owned and operated by religious institutions. Likewise, being a predominantly Catholic country, there are a considerable number of health service providers who, due to their religious convictions, view modem methods of family plarming, a major component of reproductive health under R.A. No. 10354, as immoral.

In view of the accommodation granted to conscientious objectors under Sections 7 and 23(a)(3), a great portion of the public would still be denied access to information, programs, and services regarding reproductive health, thus, effectively defeating the lofty objectives of R.A. No. 10354. Thus, Congress, still recognizing the religious freedom of conscientious objectors, instead

imposed on them the "duty to refer" the patients seeking reproductive health care and service to another health facility or reproductive health care service provider. Under the circumstances, the "duty to refer" imposes the least possible interference to the religious liberties of conscientious objectors.

Thus, the "duty to refer" imposed by Sections 7 and 23(a)(3) does not invidiously interfere with the religious freedom of conscientious objectors; any discomfort that it would cause the conscientious objectors is but an incidental burden brought about by the operation of a facially neutral and secular regulation. Not all infringements of religious beliefs are constitutionally impermissible. Just as the religious freedom of conscientious objectors must be respected, the higher interest of the State should likewise be afforded utmost protection.

Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved an individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs.[59] particularly in this case where the provisions in question have already given accommodation to religious dissensions. Values that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process.[60]

Further, the health care industry is one that is imbued with public interest. Their religious scruples aside, health facilities and health care service providers owe it to the public to give them choice on matters affecting reproductive health. Conscientious objectors carmot be permitted to impose their religious beliefs on others by denying them the choice to do so as it would amount to according a preferred status to their rights over the rights of others.

The duty to provide information regarding programs and services on reproductive health under Section 23 (a)(l) does not run afoul of religious freedom.

Section 23(a)(1)[61] punishes any health care service provider who either: (1) knowingly withhold information regarding programs and services on reproductive health; (2) knowingly restrict the dissemination of information regarding programs and services on reproductive health; and/or (3) intentionally provide incorrect information regarding programs and services on reproductive health.

The *ponencia* struck down Section 23(a)(l) as being unconstitutional as it supposedly impinges on the religious freedom of health care service providers. That in the dissemination of information regarding programs and services on reproductive health, the religious freedom of health care service providers should be respected.

I do not agree.

Contrary to the insinuation of the *ponencia*, Section 23(a)(l) does not compel health care service providers to violate their religious beliefs and convictions. Section 23(a)(l) does not absolutely prohibit a health care service provider from withholding information regarding programs and services on reproductive health.

A rule of statutory construction is that a statute must be construed as a whole. The meaning of the law is not to be extracted from a single part, portion or section or from isolated words and phrases, clauses or sentences, but from a general consideration or view of the act as a whole. Every part of the statute must be interpreted with reference to the context.[62] In line with this rule, Section 23(a)(l) should be read in conjunction with Section 23(a)(3), which provides that "the conscientious objection of a health care service provider based on his/her ethical or religious belief shall be respected."

Accordingly, a health care service provider who conscientiously objects, based on his/her ethical or religious beliefs, to programs and services regarding reproductive health is exempted from the effects of Section 23(a)(l) **only insofar as it punishes a health care service provider who knowingly withholds information** on said programs and services. Section 23(a)(l), in relation to Section 23(a)(3), recognizes that a conscientious objector cannot be compelled to provide information on reproductive health if the same would go against his/her religious convictions. In such cases, however, the conscientious objector, pursuant to Section 23(a)(3), has the correlative duty to immediately refer the person seeking information on programs and services on reproductive health to another health care service provider within the same facility or one which is conveniently accessible.

However, a health care service provider who knowingly restricts the dissemination of information or intentionally provides incorrect information on programs and services regarding reproductive health, though the said acts are based on his/her conscientious objections, would still be liable under Section 23(a)(1).

Section 23(a)(1) recognizes the primacy of the right of an individual to be informed and, accordingly, exercise his/her right to choose and make decisions on matters affecting his/her reproductive health. The provision aims to assure that every Filipino will have access to unbiased and correct information on the available choices he/she have with regard to reproductive health.[63]

It is conceded that the rights of those who oppose modem family planning methods, based on ethical or religious beliefs, should be respected. This is the reason why Section 23(a)(1), in relation to Section 23(a)(3), exempts a conscientious objector from the duty of disclosing information on programs and services regarding reproductive health.

However, such accommodation does not give license to the conscientious objectors to maliciously provide wrong information or intentionally restrict the dissemination thereof to those who seek access to information or services on reproductive health. Just as their rights must be respected, conscientious objectors must likewise respect the right of other individuals to be informed and make decisions on matter affecting their reproductive health. The freedom to act on one's belief, as a necessary segment of religious freedom, like all other rights, comes with a correlative duty of a responsible exercise of that right. The recognition of a right is not free license for the one claiming it to run roughshod over the rights of others.[64]

Further, it cannot be gainsaid that the health care industry is one, which is imbued with paramount public interest. The State, thus, have the right and duty to ensure that health care service providers would not knowingly restrict the dissemination of information or intentionally provide incorrect information on programs and services regarding reproductive health on the pretense of their religious scruples.

Section 23(b) and Section 5.24 of the IRR are not anathema to the equal protection clause.

Section 23(b)[65] penalizes any public officer specifically charged with the implementation of the provisions of R.A. No. 10354 who either: (1) restricts or prohibits the delivery of reproductive health care services; (2) forces, coerces or induces any person to use reproductive health care services; (3) refuses to allocate, approve or release any budget for reproductive health care services; (4) refuses to support reproductive health programs; or (5) does any act that hinders the full implementation of a reproductive health program.

On the other hand, the last paragraph of Section 5.24 of the IRR, provides that "[public] skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of [R.A. No. 10354 and its IRR] cannot be considered as conscientious objectors."

The *ponencia* declared Section 23(b) and the last paragraph of Section 5.24 of the IRR as unconstitutional for being violative of the equal protection clause. The *ponencia* held that the "conscientious objection clause" under Section 23(a)(3) "should equally be protective of the religious belief of public health officers;" that the "protection accorded to other conscientious objectors should equally apply to all medical practitioners without distinction whether he belongs to the public or private sector."

I do not agree.

Equal protection simply provides that all persons or things similarly situated should be treated in a similar manner, both as to rights conferred and responsibilities imposed. The purpose of the equal protection clause is to secure every person within a State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities.[66]

Persons or things ostensibly similarly situated may, nonetheless, be treated differently if there is a basis for valid classification.[67] The legislature is allowed to classify the subjects of legislation; if the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause.[68] Classification, to be valid, must (1) rest on substantial distinctions, (2) be germane to the purpose of the law, (3) not be limited to existing conditions only, and (4) apply equally to all members of the same class.[69]

Contrary to the *ponencia 's* ratiocination, I find that a valid classification exists as would justify the withholding of the religious accommodation extended to health care service providers under Section 23(a)(3) from public officers who are specifically charged with the implementation of the provisions ofR.A. No. 10354 and its IRR.

There is a substantial distinction as regards a conscientious objector under Section 23(a)(3), who may be a public or private health care service provider, and a public officer specifically charged with the duty to implement the provisions of R.A. No. 10354 and its IRR. The Constitution provides that a public office is a public trust.[70] An important characteristic of a public office is that its creation and conferment involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; that some portion of the sovereignty of the country, either legislative, executive, or judicial, attaches, for the time being, to be exercised for the public benefit.[71]

That a public officer is specifically delegated with the a sovereign function of the government, i.e. the implementation of the provisions of RA 10354 and its IRR, is what sets him apart from a health care service provider under Section 23(a)(3). It should be clarified, however, that the religious accommodation extended to conscientious objectors under Section 23(a)(3) covers public health care service providers, who are likewise considered public officers.[72] However, unlike the public officers under Section 23(b) and Section 5.24 of the IRR, public health care service providers under Section 23(a)(3) are not specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR.

Further, classifying a public officer charged with the implementation of the provisions of R.A. No. 10354 and its IRR apart from

health care service providers under Section 23(a)(3) is not only germane, but also necessary to the purpose of the law. To reiterate, the primary objective of R.A. No. 10354 is to provide an increased access to information, programs, and services regarding reproductive health. Allowing the same religious accommodation extended under Section 23(a)(3) to public officers charged with the implementation of the law would seriously hamper the delivery of the various programs and services regarding reproductive health under R.A. No. 10354. In this regard, a public officer specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR is considered an agent of the State; he cannot thus be allowed to effectively frustrate the legitimate interest of the State in enacting R.A. No. 10354 by refusing to discharge the sovereign functions delegated to him to the detriment of the public.

Moreover, the duration of the said classification is not limited to existing conditions. Also, the prohibition imposed under Section 23(b) and Section 5.24 of the IRR applies equally to all public officers specifically charged with the implementation of the law. Accordingly, the equal protection claim against Sections 23(b) and 5.24 of the IRR must evidently fail.

I agree though with the ponencia 's declaration that "the freedom to believe is intrinsic in every individual and the protective robe that guarantees its free exercise is not taken off even if one acquires employment in the government." Indeed, it is undeniable that a man does not shed his spirituality once he assumes public office. However, it cannot equally be denied that the State, in the pursuit of its legitimate secular objectives, should not be unnecessarily impeded by the religious scruples of its agents. Pursuant to the principle of separation of Church and State, it is not only the State that is prohibited from in purely ecclesiastical affairs; the Church is likewise barred from meddling in purely secular matters.[73]

Thus, in *People v. Veneracion,*[74] the Court, in resolving the question of whether a judge, after a finding that the accused had committed a crime punishable by the penalty of death, when the death penalty law was still in effect, has the discretion to impose the penalty of reclusion perpetua on account of his religious beliefs, stated that:

> We are aware of the trial judge's misgivings in imposing the death sentence because of his religious convictions. While this Court sympathizes with his predicament, it is its bounden duty to emphasize that a court of law is no place for a protracted debate on the morality or propriety of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances. The discomfort faced by those forced by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice. Courts are not concerned with the wisdom, efficacy or morality of laws. x x x.[75]

Reason demands that public officers who are specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR be classified differently from public and private health care service providers under Section 23(a)(3); they cannot be allowed to avail of the religious accommodation granted to conscientious objectors lest the lofty objectives of the law be disparaged. Any discomfort that would be caused to such public officers is but a mere incidental burden in the exercise of their religious belief, which is justified by the compelling state interest in the enactment of R.A. No. 10354.

Section 23(a)(2) punishes the refusal to perform reproductive health procedures due to lack of spousal consent and/or parental consent; it is not inimical to freedom of religion.

Section 23(a)(2)[76] penalizes any health care service provider who refuses to perform legal and medically-safe reproductive health procedures on the ground of lack of consent or authorization of either: (1) the spouse, in the case of married persons; or (2) the parents or person exercising parental authority, in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused, or convicted perpetrator.

The *ponencia* struck down Section 23(a)(2) for being unconstitutional, pointing out that, "in the performance of reproductive health procedures, the religious freedom of health care service providers should be respected." The ponencia 's conclusion stems from a misapprehension of the acts penalized under Section 23(a)(2); it does not, in any manner, invidiously interfere with the religious rights of health care service providers.

Section 23(a)(2) does not penalize the refusal of a health care service provider to perform reproductive health procedures *per se*. What is being penalized by the provision is the refusal of a health care service provider to perform such procedures **on the ground of lack of spousal consent** or parental consent in certain cases. Indeed, for reasons to be explained at length later, a health care service provider cannot avoid the performance of reproductive health procedure, in case of married persons, **solely** on the ground of lack of spousal consent since there would be no justifiable reason for such refusal.

Likewise, it is quite absurd to expect that the parent of or one exercising parental authority over an abused minor would give consent for the latter's reproductive health procedure if he/she is the one responsible for the abuse. Thus, Section 23(a)(2) dispenses with the requirement of parental authority from the abusive parent or person exercising parental authority. In such case, a health care service provider cannot refuse the performance of reproductive health procedure on the abused minor solely on the ground of lack of parental consent.

Nevertheless, even in cases where the individual seeking reproductive health procedure is married or is an abused minor, a health care service provider **may validly refuse to perform such procedure if the objection thereto is based on his/her ethical or religious beliefs**. Section 23(a)(2) must be read in conjunction with Section 23(a)(3), which provides for religious accommodation of conscientious objectors. However, in such cases, the health care service provider would still have the duty to immediately refer the married individual or the abused minor to another health care service provider within the same facility or one, which is conveniently accessible.

Section 23(a)(2)(i) merely upholds the primacy of an individual's choice on matters affecting his/her health; it does not intrude into the right to marital privacy.

Essentially, Section 23(a)(2)(i)[77] provides that a married individual may undergo a reproductive health procedure sans the consent/authorization of his/her spouse; that any health care service provider who would obstinately refuse to perform such procedure on a married individual on the pretext of the lack of spousal consent would be penalized accordingly.

The *ponencia* declared Section 23(a)(2)(i) as being contrary to Section 3, Article XV of the Constitution, which requires the State to defend the "right of the spouses to found a family," thus unduly infringing on the right to marital privacy. The *ponencia* explained that the said provision "refers to reproductive health procedures like tubal ligation and vasectomy which, by their very nature, require mutual consent and decision between the husband and wife as they affect issues intimately related to the founding of the family." The *ponencia* pointed out that decision-making concerning reproductive health procedure "falls within the protected zone of marital privacy" from which State intrusion is proscribed. Thus, the ponencia concluded, dispensing with the spousal consent is "disruptive of family unity" and "a marked departure from the policy of the State to protect marriage as an inviolable social institution."

It is conceded that intimate relations between husband and wife fall within the right of privacy formed by emanations of the various guarantees in the Bill ofRights, to which State intrusion is proscribed.[78] However, I do not agree that upholding a married individual's choice to submit to reproductive health procedure despite the absence of the consent or authorization of his/her spouse would be disruptive of the family.

The *ponencia* harps on the right to privacy that inheres in marital relationships. Yet the marital couple is not an independent entity, with a mind and heart of its own, but an association of two individuals, each with a separate intellectual and emotional makeup.[79] While the law affirms that the right of privacy inheres in marital relationships, it likewise recognizes that a spouse, as an individual per se, equally has personal autonomy and privacy rights apart from the right to marital privacy guaranteed by the Constitution. **A spouse's personal autonomy and privacy rights**, as an individual *per se,* among others, necessitates that his/her decision on matters affecting his/her health, including reproductive health, be respected and given preference.

At the heart of Section 23(a)(2)(i) is the fundamental liberty of an individual to personal autonomy, *i.e.*, to decide on matters affecting his/her reproductive health. Section 23(a)(2)(i), contrary to the ponencia 's insinuation, does not hinder a married individual from conferring with his/her spouse on his/her intended reproductive health procedure. There is nothing in the said provision, which prevents a husband/wife from obtaining the consent/authorization for an intended reproductive health procedure. Nevertheless, the objection of the other spouse thereto, as common sense would suggest, should not prevent a married individual from proceeding with the reproductive health procedure since it is his/her bodily integrity that is at stake.

In this regard, the ruling of the US Supreme Court *Planned Parenthood v. Danforth*[80] is instructive. *Danforth* involves a Missouri abortion statute, which, *inter alia*, required the written consent of the husband before a woman may be allowed to submit to an abortion[81] during the first 12 weeks of pregnancy. The US Supreme Court declared the spousal consent requirement unconstitutional for unduly intruding into the right to privacy of the woman. Thus:

> We now hold that the State may not constitutionally require the consent of the spouse, as is specified under § 3(3) of the Missouri Act, as a condition for abortion during the first 12 weeks of pregnancy. We thus agree with the dissenting judge in the present case, and with the courts whose decisions are cited above, that **the State cannot delegate to a spouse a veto power which the state itself is absolutely and totally prohibited from exercising** during the first trimester of pregnancy.
>
> x x x Clearly, since the State cannot regulate or proscribe abortion during the first stage, when the physician and his patient make that decision, the State cannot delegate authority to any particular person, even the spouse, to prevent abortion during that same period.
>
> We are not unaware of the deep and proper concern and interest that a devoted and protective husband has in his wife's pregnancy and in the growth and development of the fetus she is carrying. Neither has this Court failed to appreciate the importance of the marital relationship in our society. x x x Moreover, we recognize that the decision whether to undergo or to forgo an abortion may have profound effects on the future of any marriage, effects that are

> both physical and mental, and possibly deleterious. **Notwithstanding these factors, we cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy when the State itself lacks that right**.x x x.
>
> **It seems manifest that, ideally, the decision to terminate a pregnancy should be one concurred in by both the wife and her husband. No marriage may be viewed as harmonious or successful if the marriage partners are fundamentally divided on so important and vital an issue. But it is difficult to believe that the goal of fostering mutuality and trust in a marriage, and of strengthening the marital relationship and the marriage institution, will be achieved by giving the husband a veto power exercisable for any reason whatsoever or for no reason at all**. Even if the State had the ability to delegate to the husband a power it itself could not exercise, it is not at all likely that such action would further, as the District Court majority phrased it, the "interest of the state in protecting the mutuality of decisions vital to the marriage relationship."
>
> xxxx
>
> We recognize, of course, that, when a woman, with the approval of her physician but without the approval of her husband, decides to terminate her pregnancy, it could be said that she is acting unilaterally. **The obvious fact is that, when the wife and the husband disagree on this decision, the view of only one of the two marriage partners can prevail. Inasmuch as it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor.** x x x.
>
> (Emphases ours)[82]

It is indeed ideal that the decision whether to submit to reproductive health procedure be a joint undertaking of the spouses, especially on such a vital and sensitive matter. It is inevitable, however, for cases to abound wherein a husband/wife would object to the intended procedure of his/her spouse. In such cases, the right to reproductive health of a spouse would be rendered effectively inutile. I do not see how fostering such stalemate, which can hardly be considered as a harmonious and blissful marital relationship, could "protect the marriage as an inviolable social institution."

Thus, the law, in case of disagreement, recognizes that the decision of the spouse undergoing the reproductive health procedure should prevail. In so declaring, Section 23(a)(2)(i) does not invidiously interfere with the privacy rights of the spouses. In dispensing with the spousal consent/authorization in case of disagreement, the law is not declaring a substantive right for the first time; even in the absence of such declaration, the decision of the spouse undergoing the reproductive health procedure would still prevail. Section 23(a)(2)(i) is but a mere recognition and affirmation of a married individual's constitutionally guaranteed personal autonomy and his/her right to reproductive health.

Requiring the rendition of *pro bono* reproductive health services to indigent women for PhilHealth accreditation does not infringe on religious freedom.

Section 17 encourages private and non-government reproductive health care service providers "to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing information and education to rendering medical services, free of charge to indigent and low-income patients." It further mandated that the *pro bono* reproductive health services shall be included as a prerequisite in the accreditation under the PhilHealth.

The *ponencia* declared that Section 17, contrary to the petitioners' stance, does not amount to involuntary servitude; that it merely encourages reproductive health care service providers to render *pro bono* services. The ponencia likewise held that requiring the rendition of said *pro bono* services for PhilHealth accreditation is not an unreasonable burden, but a necessary incentive imposed by Congress in the furtherance of a legitimate State interest. Nevertheless, the *ponencia* declared Section 17 unconstitutional insofar as it affects conscientious objectors in securing PhilHealth accreditation; that conscientious objectors are exempt from rendition of reproductive health services, *pro bono* or otherwise.

While I agree with the *ponencia* that Section 17 does not amount to involuntary servitude and that requiring the rendition of *pro bono* reproductive health services for PhilHealth accreditation is not an unreasonable burden to health care service providers, I disagree that Section 17 is unconstitutional as applied to conscientious objectors.

As pointed out earlier, it is conceded that health care service providers may not be compelled to provide certain information or service regarding reproductive health if it would be anathema to his/her religious convictions. Specifically, under Section 17, a health care service provider may not be denied the opportunity to be accredited under R.A. No. 7875, otherwise known as the National Health Insurance Act of 1995, as amended by R.A. No. 10606, for his/her refusal to render *pro bono* reproductive health services **that are contrary to his/her religious beliefs.**

However, that a health care service provider has religious objections to **certain reproductive health care services** does not mean that he/she is already exempted from the requirement under Section 17 for PhilHealth accreditation. The requirement under Section 17 is stated in general terms and is religion-neutral; it merely states that health care service providers, as a condition for

PhilHealth accreditation, must render *pro bono* reproductive health service. The phrase "reproductive health care service" is quite expansive and is not limited only to those services, which may be deemed objectionable based on religious beliefs.

Reproductive health care includes: (1) family planning information and services; (2) maternal, infant and child health and nutrition, including breastfeeding; (3) proscription of abortion and management of abortion complications; (4) adolescent and youth reproductive health guidance and counseling; (5) prevention, treatment, and management of reproductive tract infections, HIV and AIDS, and other sexually transmittable infections; (6) elimination of violence against women and children, and other forms of sexual and gender-based violence; (7) education and counseling on sexuality and reproductive health; (8) treatment of breast and reproductive tract cancers, and other gynecological conditions and disorders; (9) male responsibility and involvement, and men's reproductive health; (10) prevention, treatment, and management of infertility and sexual dysfunction; (11) reproductive health education for adolescents; and (12) mental health aspect of reproductive health care.[83]

Thus, a health care service provider, his/her religious objections to certain reproductive health care services aside, may still render *pro bono* reproductive health care service, as a prerequisite for PhilHealth accreditation, by providing information or medical services, for instance, on treatment of breast and reproductive tract cancers, and other gynecological conditions and disorders or on maternal, infant and child health and nutrition.

ACCORDINGLY, I vote to **DECLARE UNCONSTITUTIONAL only** Section 7 of Republic Act No. 10354, insofar as it dispenses with the requirement of parental consent for minors who are already parents or have had a miscarriage, for being contrary to Section 12, Article II of the Constitution.

---

[1] Section 9. *The Philippine National Drug Formulary System and Family Planning Supplies.* - The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) sh all be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.

These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: *Provided, further,* That the foregoing offices shall not purchase or acq uire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent.

[2] Section 15. *Certificate of Compliance*. -No marriage license shall be issued by the Local Civil Registrar unless the applicans present a Certificate of Compliance issued for free by the local Family Planning Office certifying that they had duly received adequate instructions and information on responsible pa renthood, family planning, breastfeeding and infant nutrition.

[3] Section 17. *Pro Bono Services for indigent Women.* - Private and nongovernment reproductive healthcare service providers includ ing, but not limited to, gynecologists and obstetricians, are encouraged to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing in formation and education to rendering medical services, free of charge to indigent and low-income patients as identified through the NHTS-PR and other government measures of identifying marginalization, especially to pregnant adolescents. The forty-eight (48) hours annual *pro bono* services shall be included as a prerequisite in the accreditation under the PhilHealth.

[4] Section 5. *Hiring of Skilled Health Professionals for Maternal Health Care and Skilled Birth Attendance*. - The LGUs shall end eavor to hire an adequate number of nurses, m idwives and other skilled health professionals for maternal health care and skilled birth attenda nce to achieve an ideal skilled health professional-to-patient ratio taking into consideration DOH targets: *Provided,* That people in geographica lly isolated or highly populated a nd depressed areas shall be provided the same level of access to health care: *Provided, further*, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

xxxx

[5] Section 6. *Health Care Facilities.* -Each LGU, upon its determination of the necessity based on well-supported data provided by its local health office shall endeavor to establish or upgrade hospitals and facilities with adequate and qualified personnel, equipment and supplies to be able to provide emergency obstetric and newborn care: *Provided,* That people in geographically isolated or highly populated and depressed areas shall have the same level of access and shall not be neglected by providing other means such as home visits or mobile health care clinics as needed: *Provided, further*, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

[6] Section 16. *Capacity Building of Barangay Health Workers (BHWs)*. - The DOH shall be responsible for disseminating information and providing training programs to the LGUs. The LGUs, with the technical assistance of the DOH, shall be responsible for the training of BHWs and other barangay volunteers on the promotion of reproductive health. The DOH shalJ provide the LGUs with medical supplies and equipment needed by BHWs to carry out their functions effectively: *Provided,*

further, That the national government shall provide additionaJ and necessary funding and other necessary assistance for the effective implementation of this provision including the possible provision of additional honoraria for BHWs.

[7] Executive Order No. 209.

[8] FAMILY CODE, Article 220(4) and (6).

[9] FAMILY CODE, Article 228(3).

[10] FAMILY CODE, Article 234, as amended by Republic Act No. 6809.

[11] *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

[12] *Parham v. J.R.,* 442 U.S. 584, 604 (1977).

[13] Section 14. *Age- and Development-Appropriate Reproductive Health Education.* - The State shall provide age- and development-appropriate reproductive health education to adolescents which shall be taught by adequately trained teachers informal and nonformal educational system and integrated in relevant subjects such as, but not limited to, values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women 's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood: *Provided,* That flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents teachers-community associations, school officials and other interest groups. The Department of Education (DepED) shall formulate a curriculum which shall be used by public schools and may be adopted by private schools.

[14] Section 4(b) of R.A. No. 10354 defines the term "adolescent" as referring to "young people between the ages often (10) to nineteen (19) years who are in transition from childhood to adulthood."

[15] Petition (G.R. No. 205478), *Echavez, MD., et al. v. Ochoa, Jr., et al.* , pp. 13-14.

[16] *Mercado v. AMA Computer College-Paranaque City, Inc.,* G.R. No. 183572, April13, 2010, 618 SCRA 218, 236; *Miriam College Foundation, Inc. v. Court of Appeals,* 401 Phil. 431, 455-456 (2000).

[17] Senate Journal, Session No. 25, October 15, 2012, Fifteenth Congress, p. 565.

[18] Sponsorship speech of Senator Miriam Defensor-Santiago on Senate Bill 2865, the senate version of R.A. No. 10354, citing Young Adolescent Fertility Survey 2002 by UP Population Institute; http:1/miriam.com.phlnewsblog/2011/08/17/the-reproductive-health-act-sponsorship-speech-parts-2-and-3/, last accessed on March 24, 2014.

[19] ld.

[20] Id.

[21] CONSTITUTION, Article Jl, Section 12.

[22] CONSTITUTION, Article XIV, Section 2(2).

[23] 381 u.s. 479 (1968).

[24] Id.

[25] *See Gamboa v. Chan*, G.R. No. 193636, July 24, 2012, 677 SCRA 385, 399; *Ople v. Torres*, 354 Phil. 948 (1998); *Morfe v. Mutuc, et al.,* 130 Phil. 415 (1968).

[26] Petition (G.R. No. 205478), Echavez, *MD., et al. v. Ochoa, Jr., et al.,* p. 4.

[27] 478 P.2d 314 (1970).

[28] 393 U.S. 97 (1968).

[29] Id.

[30] *See Edwards v. Aguillard,* 482 U.S. 578 (1987).

[31] *See* also *Smith v. Ricci,* 89 N.J. 514 (1982) where the Supreme Court of New Jersey upheld the State's "family life education program" in the public elementary and secondary curricula over objections that it infringes on the religious freedom of the parents.

[32] CONSTITUTION, Article III, Section 5.

[33] *See* Corwin, The Constitution and What It Means Today, 14th ed., p. 97, citing *Cantwell v. Connecticut,* 310 U.S. 296 at 303 (1940).

[34] Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 ed., p. 314.

[35] *See Austria v. National Labor Relations Commission,* 371 Phil. 340, 353 (1999); Cruz, Constitutional Law, 2000 ed., pp. 178-179.

[36] *Cantwell v. Connecticut,* 310 U.S. 296 (1940).

[37] *See Reynolds v. United States*, 98 U.S. 145 (1879); *Prince v. Massachusetts,* 321 U.S. 158 (1944); *Employment Division v. Smith*, 494 U.S. 872 (1990).

[38] Cruz, Constitutional Law, 2000 ed., p. 187.

[39] Id.

[40] 455 Phil. 411 (2003).

[41] ld. at 576.

[42] Id. at 522-523.

[43] Id. at 577-578.

[44] *Braunfeld v. Brown*, 366 U.S. 599 (1961); *Sherbert v. Verner*, 374 U.S. 398 (1963).

[45] Article 25 of the United Nations' Universa1 Declaration of Human Rights states that:

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

[46] CONSTITUTION, Article II, Section 15.

[47] CONSTITUTION, Article XIII, Section 11.

[48] R.A. No. 10354, Section 3(d).

[49] R.A. No. 10354, Section 3(c).

[50] R.A. No. 10354, Section 3(e).

[51] Senate Journal, Session No. 18, September 13, 2011, Fifteenth Congress, p. 292.

[52] *Estrada v. Escritor* , supra note 40 at 531.

[53] Comment-in-Intervention, The Filipino Catholic Voices for Reproductive Health, Inc., pp. 36-37.

[54] Id. at 37.

[55] Sponsorship speech of Senator Miriam Defensor-Santiago on Senate Bill 2865, the senate version of R.A. No. 10354; http://miriam.com.phlnewsblogl2011/08/17/the-reproductive-health-act-sponsorship speech-parts-2-and-3/, last accessed on March 24, 2014.

[55] Sponsorship speech of Senator Pia S. Cayetano on Senate Bill 2865, the senate version of R.A. No. 10354; http://senatorpiacayetano.com/?p=412, last accessed on March 24, 2014.

[57] Unintended Pregnancy and Unsafe Abortion in the Philippines: Context and Consequences;http://www.guttmacher.orglpubs/IB-unintended-pregnancy-philippines.html, last accessed on March 24, 2014.

[58] Id.

[59] *Employment Division v. Smith,* supra note 37.

[60] Id.

[61] SEC. 23. *Prohibited Acts*.-The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

> (1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;
>
> xxxx

[62] *Aquino v. Quezon City,* 529 Phil. 486, 498 (2006).

[63] Senate Journal, Session No. 27, October 5, 2011, Fifteenth Congress, p. 433.

[64] *Tulfo v. People*, G.R. No. 161032, September 16, 2008, 565 SCRA 283, 305.

[65] Section 23. *Prohibited Acts*. -The following acts are prohibited:

xxxx

(b) Any public officer, elected or appointed, specifically charged with the duty to implement the

provisions hereof, who, personally or through a subordinate, prohibits or restricts the delivery of legal and medically-safe reproductive health care services, including family planning; or forces, coerces or induces any person to use such services; or refuses to allocate, approve or release any budget for reproductive health care services, or to support reproductive health programs; or shall do any act that hinders the full implementation of a reproductive health program as mandated by this Act;

xxxx

[66] *Bureau of Customs Employees Association (BOCEA) v. Teves,* G.R. No. 181704, December 6, 2011, 661 SCRA 589, 609.

[67] Nachura, Outline Reviewer in Political Law, 2006 ed., p. 95.

[68] *Epperson v. Arkansas,* supra note 28, at 126.

[69] *Tiu v. Court of Appeals,* 361 Phil. 229, 242 (1999).

[70] CONSTITUTION, Article XI, Section 1.

[71] See Cruz, The Law on Public Officers, 2007 ed., p. 3.

[72] Section 5.24 of the IRR recognizes that public officers, *i.e.*, public skilled health professionals may be conscientious

objectors, albeit after complying with certain requisites, *viz*:

Section 5.24. *Public Skilled Health Professional as a Conscientious Objector*. In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skilled health professional shall comply with the following requirements:

a) The skilled health professional shall explain to the client the limited range of services he/she can provide;

b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;

c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client 's travel arrangements and financial capacity;

d) Written documentation of compliance with the preceding requirements; and e) Other requirements as determined by the DOH.

In the event where the public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay.

[73] Cruz, Constitutional Law, 2000 ed., p. 179.

[74] 319 Phil. 364 (1995).

[75] Id. at 373.

[76] SEC. 23. Prohibited Acts. - The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

xxxx

(2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:

(i) Spousal consent in case of married persons: *Provided,* That in case of disagreement, the decision of the one undergoing the procedure shall prevail; and

(ii) Parental consent or that of the person exercisin g parental authority in the case of ab used minors, where the parent or the person exercisi ng parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court. In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures and in no case shall consent be required in emergency or serious cases as defined in Republic Act No. 8344; and

xxxx

[77] Id.

[78] *See Griswold v. Connecticut*, supra note 23.

[79] *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

[80] 428 U.S. 52 (1976); see also *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

[81] In the US, Abortion, pursuant to *Roe v. Wade*, (410 U.S. 113 [1973]) is a recognized right of the woman before a fetus is viable outside the womb, which is generally during the first trimester of the pregnancy.

[82] Id.

[83] R.A. No. 10354, Section 4(q).

CONCURRING AND DISSENTING OPINION

PERLAS-BERNABE, *J.*:

> There never was a law yet made, I conceive, that hit the taste *exactly* of every man, or every part of the community; of course, if this be a reason for opposition, no law can be executed at all without force, and every man or set of men will in that case cut and carve for themselves; the consequences of which must be deprecated by all classes of men, who are friends to order, and to the peace and happiness of the country.
>
> George Washington, in a Letter to Major-General Daniel Morgan [1]

Perhaps the most functional effect of law in a representative democratic society[2] like ours is its ability to curb the gridlocking tendencies of divergence. Social order dictates that the law shall be binding and obligatory against all, notwithstanding our differences in belief and opinion. The solution to social disagreement ought to be achieved only through legislative process, and not through this Court. Time and again, it has been enunciated that "[t]he judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government."[3] Consequently, as an overriding principle of judicial review, courts are bound to adopt an attitude of liberality in favor of sustaining a statute. Unless its provisions clearly and unequivocally, and not merely doubtfully, breach the Constitution, it must not be stricken down. [4] If any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases.[5]

With these principles in mind, I submit that Republic Act No. 10354, 6 otherwise known as "The Responsible Parenthood and Reproductive Health Act of 2012" (RH Law) should be declared constitutional. I therefore join the *ponencia* in upholding the constitutionality of several assailed provisions[7] of the RH Law and invalidating Sections 3.01(a)[8] and 3.01(j)[9] of its Implementing Rules and Regulations (RH-IRR), but dissent in striking down Sections 7, 23(a)(1), 23(a)(2), 23(a)(2)(i), 23(a)(3), 23(b), and 17 thereof, as well as its counterpart RH-IRR provisions, with the exception of Section 5.24 thereof which I find invalid for being *ultra vires*. I deem it unnecessary to expound on the reasons for my concurrence; the *ponencia* and my colleagues' opinions on that front already reflect the wealth of argument in favor of sustaining several of the law's provisions,[10] to which I find no impetus to add more.

Also, I, similar to the views shared by Justice Antonio T. Carpio[11] and Justice Marvic Mario Victor F. Leonen,[12] further dissent insofar as the *ponencia* seeks to foist a judicial determination on the beginning of life. Absent a proper presentation of established scientific facts which becomes more realizable today due to the advances in medicine and technology, the *ponencia*, by mere reference to the exchanges of the Framers during the constitutional deliberations, treads on dangerous territory by making a final adjudication on this issue. Section 12,[13] Article II of the 1987 Philippine Constitution is not a definitive guidepost to the question on when does life begin, but rather a declaration of the State's policy to equally protect the life of the mother and the life of the unborn from conception, to which the objectives and provisions of the RH Law, to my mind, remain consistent and faithful to.[14]

That being said, I proceed to briefly explain the reasons behind my other points of dissent.

I. The Duty to Refer, Perform, and Inform *vis-a-vis* Conscientious Objection.

Utilizing the parameters of strict scrutiny in accord with the doctrine of benevolent neutrality, the *ponencia* finds **Section 7**[15] of the RH Law and its corresponding provision in the RH-IRR unconstitutional insofar as they require private health facilities and non-maternity specialty hospitals and hospitals owned and operated by a religious group to immediately **refer** patients not in an emergency or life-threatening case, as defined under the RH Law, to another health facility which is conveniently accessible.

The *ponencia* further relates[16] Section 7 to **Sections 23(a)(1)**[17] and **23(a)(2)**[18] of the RH Law, as well as their counterpart RH-IRR provisions, particularly Section 5.24 thereof, insofar as they, as to the first provision stated, punish any health care service provider who fails and or refuses **to disseminate information** regarding programs and services on reproductive health (supposedly) regardless of his or her religious beliefs, and insofar as they, as to the second provision stated, punish any health care service provider who refuses **to perform** reproductive health procedures on account of their religious beliefs. Stating jurisprudential precepts on the Free Exercise Clause, the *ponencia* applies its religious freedom take on Section 7 to Sections 23(a)(1) and 23(a)(2) of the RH Law, "considering that in the dissemination of information regarding programs and services and in the performance of reproductive health procedures the religious freedom of health care service providers should be respected."[19]

Equally treated as unconstitutional is **Section 23(a)(3)**[20] and its corresponding provision in the RH-IRR, particularly **Section 5.24**[21] thereof, insofar as they punish any health care service provider who fails and/or refuses to refer a patient not in an emergency or life-threatening case as defined under Republic Act No. 8344, to another health care service provider within the same facility or one which is conveniently accessible regardless of his or her religious beliefs.

I disagree.

Under the benevolent-neutrality theory utilized by the *ponencia* in support of its position, religious freedom is seen as a substantive right and not merely a privilege against discriminatory legislation. With religion looked upon with benevolence and not hostility, benevolent neutrality allows accommodation of religion under certain circumstances. As case law instructs, it is the strict scrutiny-compelling state interest test which is most in line with the benevolent neutrality-accommodation approach.[22] This method of analysis operates under three (3) parameters, namely: (*a*) the sincerity of the religious belief which is burdened by a statute or a government action; (*b*) the existence of a compelling state interest which justifies such burden on the free exercise of religion; and (*c*) in the furtherance of its legitimate state objective, the state has employed the least intrusive means to such exercise of religious beliefs.

There is no striking objection to the concurrence of the first parameter given that the burden of proving the same lies on the person asserting a religious freedom violation, as petitioners in these consolidated cases.

As to the second parameter, the *ponencia* misplaces its conclusion that there exists no compelling state interest to justify the burden of the conscientious objector's duty to refer on statistical data showing that the maternal mortality rate had actually dropped even before the enactment of the RH Law.[23] What seems to be lost in the equation is the substantive value advanced by the legislative policy, namely, the right to health, an inextricable adjunct of one's right to life, which is sought to be protected by increasing the public's awareness of reproductive health options. Notwithstanding the premise that maternal deaths have substantially decreased during the last two (2) decades, it cannot be seriously doubted that the State has a compelling interest to protect its citizen's right to health and life. The denial (or the threat of denial) of these rights even only against one, to my mind, is enough to conclude that the second parameter of scrutiny has been passed.

With respect to the third parameter, the *ponencia* submits that the State has not used the least intrusive means in advancing its interest by imposing the duty to refer on health care service providers who are conscientious objectors since they cannot be compelled, "in conscience, (to) do indirectly what they cannot do directly."[24] But again, what is apparently discounted is the inherent professional responsibility of health care service providers to apprise patients of their available options concerning reproductive health. Health care service providers cannot - as they should not - absolutely keep mum on objective data on reproductive health, lest they deprive their patients of sound professional advice or deny them the right to make informed choices regarding their own reproductive health. Religious beliefs may exempt the conscientious objector from directly performing the act objected to, but the least intrusive means, in this scenario, is to impose upon them, at the very least, the duty to refer the patient to another health care service provider within the same facility or one which is conveniently accessible to the end of realizing the patient's health choice. After all, nothing in the assailed provisions on the duty to refer prevents the conscientious objector from sharing his or her religious beliefs on the reproductive health method the patient is informed of. The conscientious objector can preach on his or her religious beliefs notwithstanding the secular command of sharing objective info ation on reproductive health methods or referring the patient to another health care service provider who may possibly subscribe to a different belief. I also see no burden on the conscience through what the *ponencia* dubs as indirect complicity. I believe that when the health care service provider refers the patient to another, the former, in fact, manifests his or her conviction against the objected method. Thus, the argument can be made that the act of referral is in itself the objection. Inviolability of conscience should not be used as a *carte blanche* excuse to escape the strong arm of the law and its legitimate objectives. Our liberties may flourish within reasonable limitations.

Neither do I find Section 23(a)(l) of the RH Law, as well as its RH IRR provision counterpart, invidious of religious freedom, particularly, of the Free Exercise Clause, for the reason that information dissemination on health advice, including that on reproductive health, constitutes, as mentioned, an inherent professional responsibility of health care service providers to their patients. Informing the patient of his or her health options does not, in any way, preclude the conscientious objector from, as also earlier stated, sharing his or her religious beliefs on the matter. After disseminating the information, and when the·patient affirmatively decides to take the reproductive health procedure, then the conscientious objector may opt not to perform such procedure himself or. herself and, instead, refer the patient to another health care service provider based only on the qualification of accessibility; nothing in the law requires the conscientious objector to refer the patient to a health care service provider capable and willing to perform the reproductive health procedure objected to.

In the same light, I find Section 23(a)(2) clear from any religious freedom infraction for the reason that conscientious objectors are given the choice not to perform reproductive health procedures on account of their religious beliefs, albeit they are dutifully required to refer their patients to another health care service provider within the same facility or one which is conveniently accessible to the end of realizing the patient's health choice. The same reasons stated in my previous discussions equally obtain in this respect. Accordingly, I submit that the RH Law and the RH-IRR provisions governing the conscientious objector's duty to refer and its correlative prov1S1ons on information dissemination and performance be upheld as constitutional.

II. <u>Section 23(b) of tbe RH Law in relation to</u>

Section 5.24 of tbe RH-IRR *vis-a-vis*
tbe Conscientious Objector Exception.

Section 23(b) of the RH Law provides a general proscription on non performance, restriction, and/or hindrance of delivering reproductive health care services against a public officer specifically charged with the implementation of the RH Law, *viz*.:

> SEC. 23. *Prohibited Acts.*- The following acts are prohibited:
>
> x x x x
>
> (b) Any public officer, elected or appointed, specifically charged with the duty to implement the provisions hereof, who, personally or through a subordinate, prohibits or restricts the delivery of legal and medically-safe reproductive health care services, including family planning; or forces, coerces or induces any person to use such services; or refuses to allocate, approve or release any budget for reproductive health care services, or to support reproductive health programs; or shall do any act that hinders the full implementation of a reproductive health program as mandated by this Act;
>
> x x x x

Nothing in the provision's text or any provision of the entire RH Law negates the availability of the conscientious objector exception to the public officers above-described.

This notwithstanding, **Section 5.24 of the RH-IRR** states that skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RH Law **cannot be deemed as conscientious objectors**, *viz*.:

> SEC. 5.24 *Public Skilled Health Professional as a Conscientious Objector.* In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skilled health professional shall comply with the following requirements:
>
> a) The skilled health professional shall explain to the client the limited range of services he/she can provide;
>
> b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;
>
> c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client's travel arrangements and financial capacity;
>
> d) Written documentation of compliance with the preceding requirements; and
>
> e) Other requirements as determined by the DOH.
>
> In the event where the public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay.
>
> ***Provided,* That skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules, cannot be considered as conscientious objectors.**
>
> Within sixty (60) days from the effectivity ofthese rules, the DOH shall develop guidelines for the implementation of this provision. (Emphasis supplied)

The *ponencia* declared Section 5.24 of the RH-IRR as unconstitutional for being discriminatory and violative of the equal protection clause. It held that there is no perceptible distinction between skilled health professionals who by virtue of their office are specifically charged with the duty to implement the provisions of the RH Law and other public health care service providers so as to preclude the former from availing of the conscientious objector exemption, considering that they are also accorded the right to the free exercise of religion. It opined that "the freedom to believe is intrinsic in every individual and the protective robe

that guarantees its free exercise is not taken off even if one acquires employment in the government."[25]

I concur with tbe *ponencia* only in striking down Section 5.24 of the RH-IRR but dissent against its undertaking of an equal protection analysis.

As I see it, the problem lies only with Section 5.24 of the RH-IRR **going beyond**[26] what is provided for in the RH Law. Section 5.24 of tbe RH-IRR is an erroneous construction of Section 23(b) of the RH Law which must stand as constitutional. As earlier mentioned, the latter provision only states general prohibitions to public officers specifically charged with the implementation of the RH Law; nothing in its text negates the availability of the conscientious objector exception to them, or to "skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the [RH Law and the RH-IRR]." Section 23(b) of the RH Law must be construed in the context of its surrounding provisions which afford the conscientious objector the ability to opt-out from performing reproductive health practices on account of his or her religious beliefs. As the aforementioned RH-IRR provision would be stricken down as invalid on *ultra vires* grounds, I believe that an equal protection analysis is unnecessary.

III. Minority Exceptions to Parental Consent.

The *ponencia* also holds Section 7[27] and its corresponding RH-IRR provision unconstitutional insofar as they allow minor-parents or minors who have suffered a miscarriage access to modern methods of family planning without written consent from their parents or guardianls. The *ponencia* deemed this as a premature severing of the parents' parental authority over their children even if she is not yet emancipated, and thus, declared unconstitutional as well.[28]

Again, I disagree.

The provision only states that minor children who are already parents or have had a miscarriage are entitled to information and access to modern day methods of family planning without the. need of their parents' consent. There is nothing in the RH Law which forecloses the exercise of parental authority. Parents may still determine if modern day family planning methods are beneficial to the physical well-being of their child, who is a minor-parent or a minor who has suffered a miscarriage. The RH Law provision should be read complementarily with Articles 209 and 220 of the Family Code of the Philippines[29] which state that:

> Art. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, **parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.**
>
> Art. 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children or wards the following rights and duties:
>
> xxxx
>
> (4) To furnish them with good and wholeome educational materials, supervise their activities, recreation and association with others, protect them from bad company, **and prevent them from acquiring habits detrimental to their health, studies and morals**; (Emphases and underscoring supplied)

The RH Law provision on parental consent does not amount to a negation or even a dilution of the parent's right to care for and rear their minor child who is already a parent or has undergone an abortion towards the end of developing her physical character and well-being. Neither does the provision inhibit the minor's parents from preventing their child from acquiring detrimental health habits. Recognizing that these minors have distinct reproductive health needs due to their existing situation, the law simply does away with the necessity of presenting to reproductive health care service providers prior parental consent before they are given information and access to modem day methods of family planning. In a predominantly conservative culture like ours, wherein the thought that premarital sex is taboo pervades, a minor who is already a parent or one who has undergone a previous miscarriage is, more often than not, subject to some kind of social stigma. Said minor, given her predisposition when viewed against social perception, may find it difficult, or rather uncomfortable, to approach her parents on the sensitive subject of reproductive health, and, much more, to procure their consent. The RH Law does away with this complication and makes modem methods of family planning easily accessible to the minor, all in the interest of her health and physical well-being. On all accounts, nothing stops the minor's parents to, in the exercise of their parental authority, intervene, having in mind the best interest of their child insofar as her health and physical well-being are concerned.

Besides, in addition to its limited availability to a distinct class of minors, *i.e.*, minor children who are already parents or have had a miscarriage, the provision only dispenses wi_th the need for prior parental consent in reference to mere information dissemination and access to modem day methods of family planning. When the minor elects to undergo the required surgical procedure, the law makes it clear that the need for prior parental consent is preserved, but, understandably, in no case shall consent be required in emergency or serious cases. **Section 23(a)(2)(ii)** of the RH Law states this rule:

SEC. 23. *Prohibited Acts.*- The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

x x x x

(2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:

xxxx

(ii) Parental consent or that of the person exerctsmg parental authority in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court. **In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures and in no case shall consent be required in emergency or serious cases as defined in Republic Act No. 8344**; and

x x x x (Emphasis supplied)

IV. Spousal Consent.

Section 23(a)(2)(i)[30] of the RH Law provides that spousal consent is needed before a married person may undergo certain reproductive health procedures, such as vasectomy for males and tubal ligation for females, provided, that in case of disagreement, it is the decision of the one undergoing the procedure which shall prevail.

In declaring this provision as unconstitutional, the *ponencia* explained that since a decision to undergo a reproductive health procedure principally affects the right to found a family, such decision should not be left solely to the one undergoing the procedure, but rather, should be made and shared by both spouses as one cohesive unit.[31]

I would, once more, have to disagree with the *ponencia*.

There is nothing in the RH Law that would completely alienate the other spouse in the decision-making process nor obviate any real dialogue between them. This is a purely private affair left for the spouses to experience for themselves. Ideally and as much as possible, spouses should, as the *ponencia* puts it, act as "one cohesive unit" in the decision-making process in undergoing a reproductive health procedure. However, when there is a complete disagreement between the spouses, the assailed RH Law provision provides, by way of exception, a deadlock-mechanism whereby the decision of the one undergoing the procedure shall prevail if only to prevent any unsettling conflict between the married couple on the issue. To add, the assailed provision, in my view, also provides a practical solution to situations of estrangement which complicates the process of procuring the other spouse's consent.

Verily, on matters involving medical procedures, it cannot be seriously doubted that the choice of the person undergoing the procedure is of paramount importance precisely because it is his or her right to health, as an inextricable adjunct of his or her right to life, which remains at stake. The right to individual choice is the main thrust of the doctrine of personal autonomy and self-determination which provides that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."[32] Under this doctrine, a competent adult has the right to refuse medical treatment, even treatment necessary to sustain life;[33] all the more, should the adult have the right to, on the flip side, avail of medical treatment necessary to sustain his or her life. Aptly citing American jurisprudence, Chief Justice Maria Lourdes P. A. Sereno, in her opinion, enunciates that "every human being of adult years and sound mind has a right to determine what shall be done with his own body."[34] I share this sentiment.

In the final analysis, the constitutional right to found a family should not be shallowly premised on the mere decision on the number of children; the right to found a family, more importantly, looks towards the well-being of its members, such as the reproductive health of the spouse undergoing the disputed procedure. To this end, the decision of said family member should be respected and not be overruled by either his/her spouse or by the courts. Respect for individual autonomy, especially in cases involving the individual 's physical well-being, is a reasonable limitation and, even, a corollary to the spouses' collective right to found a family.

V. *Pro Bono* Services as Pre-requisite for PhiiHealth Accreditation.

Section 17[35] of the RH Law provides that public and private healthcare service providers are encouraged to provide at least 48

hours of *pro bono* reproductive health services annually, ranging from providing information and education to rendering medical services. The same proviso also states that such annual *pro bono* service is a pre-requisite for the healthcare service provider's accreditation with the PhilHealth.

In declaring this provision as unconstitutional, the *ponencia* while recognizing that said provision only encourages and does not compel under pain of penal sanction the rendition of pro bono reproductive health care services, nonetheless held that it violates the conscientious objectors' freedom to exercise their religion.[36]

On this last point, I still disagree.

As there is no form of compulsion, then the conscientious objector remains free to choose whether to render *pro bono* reproductive health care services or not. In the event, however, that he or she decides not to render such services, the State has the right to deny him or her PhilHealth accreditation. Being a mere privilege, the State, through its exercise of police power, is free to impose reasonable concessions that would further its policies, i.e., dissemination of information and rendering of services on reproductive health, in exchange for the grant of such accreditation.

VI. A Final Word.

The sacredness of human life and the primacy of the family are values we, despite our differences, have all come to hold true. The people who, through their elected representatives in Congress, have given the RH Law their stamp of approval, I believe, do not cherish these values any less. It is by trusting that we all share a common respect for the core values that we can all afford the RH Law a chance to foster its legitimate objectives. There is no question that we, by the blessings of democracy, all have the right to differ on how we chart our nation's destiny. But the exercise of one's freedoms must always come with the recognition of another's. We have built our political institutions not only as a venue for liberty to thrive, but also as a unifying space to reconcile disparity in thought. While we may have now reached a verdict on the path to take on the issue of reproductive health, let us not forget that, in the fire of free exchange, the process is a continuous one: we are all contributors to constant refinement; nothing precludes us from positive change. As a noted philosopher even once remarked, freedom is nothing but a chance to be better.[37] I share this belief, but I also know this: that in the greater scheme of things, there is a time and place for everything.

IN VIEW OF THE FOREGOING, I vote to declare Republic Act No. 10354 as **CONSTITUTIONAL**, and, on the other hand, Section 5.24 of its Implementing Rules and Regulations as **INVALID** for the reasons stated in this opinion.

---

[1] (visited April 5, 2014). Section 1, Article II ofthe 1987 Philippine Constitution provides:

> SEC. 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

[2] *Lozano v. Nograles*, G.R. Nos. 187883 & 187910, 607 Phil. 334, 340 (2009), citing *Angara v. Electoral commission*, 63 Phil. 139 (1936).

[4] See *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 386-387, citing *ABAKADA GURO Party List v. Purisima*, 584 Phil. 246, 268 (2008); emphasis supplied.

[5] *Victoriano v. Elizalde Rope Workers' Union,* 158 Phil. 60 (1974).

[6] Entitled "AN ACT PROVIDING FOR A NATIONAL POLICY ON RESPONSIBLE PARENTHOOD AND REPRODUCTIVE HEALTH."

[7] Sections 9, 14 and 15, among others.

[8] Section 3.01 For purposes of these Rules, the terms shall be defined as follows:

a) *Abortifacient* refers to any drug or device that primarily induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination ofthe Food and Drug Administration (FDA).

[9] Section 3.01 For purposes ofthese Rules, the terms shall be defined as follows:

x x x x

j) *Contraceptive* refers to any safe, legal, effective, and scientifically proven modem family planning method, device, or health

product, whether natural or artificial, that prevents pregnancy but does not primarily destroy a fertilized ovum or prevent a fertilized ovum from being implanted in the mother's womb in doses of its approved indication as determined by the Food and Drug Administration (FDA).

[10] Id.

[11] See Concurring Opinion of Justice Antonio T. Carpio, pp. 2-3.

[12] See Dissenting Opinion of Justice Marvic Mario Victor F. Leonen, pp. 3, 43-77.

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

[14] Section 2 of the RH Law provides:

> SEC. 2. *Declaration of Policy*. -The State recognizes and guarantees the human rights of all persons including their right to equality and nondiscrimination of these rights, the right to sustainable human development, the right to health which includes reproductive health, the right to education and information, and the right to choose and make decisions for themselves in accordance with their religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood.
>
> Pursuant to the declaration of State policies under **Section 12, Article II of the 1987 Philippine Constitution**, it is the duty of the State to protect and strengthen the family as a basic autonomous social institution **and equally protect the life of the mother and the life of the unborn from conception**. The State shall protect and promote the right to health of women especially mothers in particular and of the people in general and instill health consciousness among them. The family is the natural and fundamental unit of society. The State shall likewise protect and advance the right of families in particular and the people in general to a balanced and healthful environment in accord with the rhythm and harmony of nature. The State also recognizes and guarantees the promotion and equal protection of the welfare and rights of children, the youth, and the unborn.
>
> x x x x (Emphasis supplied)

[15] SEC. 7. *Access to Family Planning*.- All accredited public health facilities shall provide a full range of modem family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children: *Provided,* That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modem family planning methods: ***Provided, further*, That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible**: *Provided, finally*, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344. (Emphasis and underscoring supplied)

[16] See ponencia, pp. 66-71.

[17] SEC. 23. *Prohibited Acts.* - The following acts are prohibited:

> (a) Any health care service provider, whether public or; private, who shall:
>
> (1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;
>
> x x x x (Emphasis supplied)

[18] SEC. 23. *Prohibited Acts.* The following acts are prohibited:

> (a) Any health care service provider, whether public or private, who shall:
>
> xxxx

(2) Refuse to **perform** legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization on the following persons in the following instances:

x x x x (Emphasis supplied)

[19] *Ponencia*, pp. 68-69.

[20] SEC. 23. *Prohibited Acts*. The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

xxxx

(3) Refuse to extend quality health care services and infonnation on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: ***Provided*, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible**: *Provided, further,* That the person in not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospital and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases;

x x x x (Emphasis and underscoring supplied)

[21] SEC. 5.24. *Public Skilled Health Professional as a Conscientious Objector*. - x x x.

x x x x

Provided, That skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act [RH Law] and these Rules, cannot be considered as conscientious objectors.

x x x x

[22] See *Estrada v. Escritor,* 525 Phil. 110 (2006).

[23] See *ponencia,* pp. 74-75, citations omitted.

[24] Id. at 67.

[25] Id. at 69.

[26] "It is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law." (*Hijo Plantation, Inc. v. Central Bank,* 247 Phil. 154, 162 [1988], citing *People v. Lim,* 108 Phil. 1091 [1960]).

[27] SEC. 7, *Access to Family Planning*.- x x x.

x x x x

No person shall be denied information and access to family planning services, whether natural or artificial: ***Provided*, That minors will not be allowed access to modern methods of family planning <u>without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage</u>.** (Emphasis and underscoting supplied)

[28] See *ponencia*, pp. 79-80.

[29] Executive Order No. 209, as amended.

[30] SEC. 23. Prohibited Acts.The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

x x x x

(2) Refuse to perfonn legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization on the following persons in the following instances:

(i) Spousal consent in case of married persons: *Provided,* **That in case of disagreement, the decision of the one undergoing the procedure shall prevail**; and

x x x x (Emphasis and underscoring supplied)

[31] See *ponencia,* pp. 78-79.

[32] *Conservatorship of Wendland,* 26 Cal. 4th 519 (2001), citing *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250 (1891).

[33] Id.

[34] Chief Justice Sereno's Opinion, p. 14, citing *Schloendorff v. Society of New York Hospital,* 105 N. E. 92.

[35] SEC. 17. Pro Bono Services for Indigent Women. - Private and nongovernment reproductive healthcare service providers including, but not limited to, gynecologists and obstetricians, are encouraged to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing information and education to rendering medical services, free of charge to indigent and low-income patients as identified through the NHTS-PR and other government measures of identifYing marginalization, especially to pregnant adolescents. The forty-eight (48) hours annual *pro bono* services shall be included as a prerequisite in the accreditation under the PhilHealth.

[36] See *ponencia*, pp. 88-89.

[37] Albert Camus, *"Resistance, Rebellion, and Death: Essays,"* p. 103 (1961).

CONCURRING AND DISSENTING OPINION

REYES, J.:

I concur with the *ponencia's* declaration that Republic Act (R.A.) No. 10354, otherwise known as the Responsible Parenthood and Reproductive Health Act of 2012, perused in its entirety, is not recusant of the various rights enshrined in our Constitution. Particularly, I concur that: (1) R.A. No. 10354, m making contraceptives and other reproductive health products and services more accessible, does not run counter to the constitutional right to life; (2) R.A. No. 10354, in giving priority to the poor in the implementation of gove1nment programs to promote basic reproductive health care, does not violate the equal protection clause of the Constitution; (3) Section 9,[1] in mandating the inclusion of family planning products and supplies in the Philippine National Drug Formulary System, does not violate the right to health of the people; (4) Section 15[2] is not anathema to freedom of religion; (5) Section 17[3] does not amount to involuntary servitude; (6) the delegation by Congress to the Food and Drug Administration (FDA) of the power to determine whether a supply or product is to be included in the Essential Drugs List constitutes permissible delegation of legislative powers; and (7) Sections 5,[4] 6,[5] and 16[6] do not amount to an encroachment on the autonomy of local governments.

The *ponencia* declared Section 7, insofar as it dispensed with the requirement of written parental consent for minors who are already parents or have had a miscarriage, with regard to access to modem methods of family planning, unconstitutional as it infringes on the right to privacy with respect to one's family. I agree that Section 7, **inasmuch as it dispensed with the requirement of parental consent**, is unconstitutional. Nevertheless, in addition to ponencia's ratiocination on the right to privacy, I would discuss further that Section 7, by dispensing with the requirement of parental consent for minors in certain cases, violates Section 12, Article II of the 1987 Constitution.

I agree with the *ponencia's* conclusion that the attack on the constitutionality of Section 14, which provides for age- and development appropriate reproductive health education to adolescents, must fail. However, I disagree with the *ponencia* insofar as it declared that the issues raised against the constitutionality of Section 14 are premature as the Department of Education (DepEd) has yet to prepare a curriculum on age and development-appropriate reproductive health education. The Court has already made pronouncements on the constitutionality of the other provisions of R.A. No. 10354 despite the lack of an actual case

or controversy, the issues presented being matters of transcendental importance. There is thus no reason for the Court to avoid a definitive ruling on the constitutionality of Section 14. It is my view, which I will expound later, that Section 14 does not: (1) violate the academic freedom of educational institutions; (2) intrude into the natural and primary right of parents to rear their children; and (3) amount to an infringement of the freedom of religion.

I dissent, however, from the *ponencia's* conclusion that the following provisions ofR.A. No. 10354 are unconstitutional:

(1) Section 7, insofar as it imposes on non-maternity specialty hospitals and hospitals owned and operated by a religious group the duty to refer a person seeking access to modem family planning methods to another health facility, for being violative of the freedom of religion;
(2) Section 23(a)(l), which punishes any health care service provider who withholds information or restricts the dissemination thereof regarding programs and services on reproductive health, and Section 23(a)(2), which punishes any health care service providers who refuse to perform reproductive health procedures on the ground of lack of consent or authorization in certain cases, for being violative of the freedom of religion;
(3) Section 23(a)(2)(i), which allows a married individual to undergo reproductive health procedure *sans* the consent of his/her spouse, for being contrary to one's right to privacy;
(4) Section 23(a)(3), insofar as it requires a conscientious objector to immediately refer a person seeking reproductive health care and service to another health care service provider, for being violative of the freedom of religion;
(5) Section 23(b), which punishes any public officer charged with the duty to implement the provision of R.A. No. 10354 who prohibits or restricts the delivery of reproductive health care services, and Section 5.24 of the Implementing Rules and Regulations (IRR) of R.A. No. 10354, which, *inter alia,* provides that those charged with the duty to implement the provisions of R.A. No. 10354 cannot be considered as conscientious objectors, for being violative of the freedom of religion; and
(6) Section 17, insofar as it included the rendition of at least fortyeight (48) hours annual *pro bono* reproductive health services as a prerequisite in the accreditation under PhilHealth.

Section 7, inasmuch as it dispenses with the requirement of written parental consent, violates Section 12, Article II of the Constitution.

Parents have the natural and primary right and duty to nurture their children. This right is recognized by Section 12, Article II of the Constitution, which pertinently provides that:

> Section 12. x x x The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Concomitant to their natural and primary right and duty to provide for, care, and nurture their children, parents exercise parental authority over the persons of their unemancipated children. In this regard, Article 209 of the Family Code7 provides that:

> Article 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, **parental authority and responsibility shall include** the caring for and rearing them for civic consciousness and efficiency and the **development of their moral, mental and physical character and well-being**. (Emphasis ours)

The authority that is exercised by parents over their unemancipated children includes the right and duty to enhance, protect, preserve, and maintain their physical and mental health and to represent them in all matters affecting their interests.[8] The authority exercised by parents over their unemancipated children is terminated, *inter alia,* upon emancipation of the child.[9] Emancipation takes place upon attainment of the age of majority, which commences at the age of eighteen years.[10]

Section 7 ofR.A. No. 10354 pertinently provides that:

> Section 7. *Access to Family Planning.* - All accredited public health facilities shall provide a full range of modem family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children: *Provided,* That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods: *Provided, further,* That these hospitals shall immediately refer the person seeking such care and services to

another health facility which is conveniently accessible: Provided, finally, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344.

No person shall be denied information and access to family planning services, whether natural or artificial: *Provided,* That minors will not be allowed access to modern methods of family planning without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage.

Section 7 seeks to make modem family planning methods more accessible to the public. The provision mandates that no person shall be denied information and access to family planning services, whether natural or artificial. However, the last *proviso* of Section 7 restricts the access of minors to modem methods of family planning; it requires a written parental consent before a minor may be allowed access thereto. This is but recognition of the parental authority that is exercised by parents over the persons of their unemancipated children. That it is both a duty and a right of the parents to protect the physical health of their unemancipated children.

However, Section 7 provided an exception to the requirement of written parental consent for minors. A minor who is already a parent or has had a miscarriage may be allowed access to modem methods of family planning notwithstanding the absence of a written parental consent therefor. This runs afoul of the natural and primary right and duty of parents in the rearing of their children, which, under Section 12, Article II of the Constitution, should receive the support of the government.

There exists no substantial distinction as between a minor who 1s already a parent or has had a miscarriage and a minor who is not yet a parent or never had a miscarriage. There is no cogent reason to require a written parental consent for a minor who seeks access to modem family planning methods and dispense with such requirement if the minor is already a parent or has had a miscarriage. Under the Family Code, all minors, generally, regardless of his/her circumstances, are still covered by the parental authority exercised by their parents. That a minor is already a parent or has had a miscarriage does not operate to divest his/her parents of their parental authority; such circumstances do not emancipate a minor.

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder.[11] Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments.[12]

Considering that the last *proviso* of Section 7 operates to divest parents of their parental authority over the persons of their minor child who is already a parent or has had a miscarriage, the same must be struck down for being contrary to the natural and primary right and duty of parents under Section 12, Article II of the Constitution.

Section 14 does not violate the academic freedom of educational institutions nor infringe on the natural and primary right and duty of parents to rear their children.

Section 14[13] of R.A. No. 10354 mandates the provision of age- and development-appropriate reproductive health education, which would be taught to adolescents14 in public schools by adequately trained teachers. The curriculum on age- and development-appropriate reproductive health education, which shall be formulated by the DepEd after consultation with parents-teachers-community associations, shall include subjects such as: values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood.

The petitioners claim that Section 14, by mandating the inclusion of age- and development-appropriate reproductive health education to adolescents, violates the academic freedom of educational institutions since they will be compelled to include in their curriculum a subject, which, based on their religious beliefs, should not be taught to students.[15]

The petitioners' claim is utterly baseless. Section 5(2), Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. The institutional academic freedom includes the right of the school or college to decide and adopt its aims and objectives, and to determine how these objections can best be attained, free from outside coercion or interference, save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term "academic freedom" encompass the freedom of the school or college to determine for itself: (1) who may teach; (2) what may be taught; (3) how lessons shall be taught; and (4) who may be admitted to study.[16]

An analysis of the foregoing claim requires a dichotomy between public and private educational institutions. The last sentence of Section 14 provides that the age- and development-appropriate reproductive health curriculum that would be formulated by the DepEd "shall be used by public schools and **may be adopted** by private schools." The mandated reproductive health education would only be compulsory for public schools. Thus, as regards private educational institutions, there being no compulsion, their constitutional right to academic freedom is not thereby violated.

As regards public educational institutions, though they are mandatorily required to adopt an age- and development-appropriate reproductive health education curriculum, the claimed curtailment of academic freedom is still untenable. Section 4(1), Article XIV of the Constitution provides that "[t]he State x x x shall exercise reasonable supervision and regulation of all educational institutions." The constitutional grant of academic freedom does not withdraw from the State the power to supervise and regulate educational institutions, whether public or private. The only requirement imposed by the Constitution on the State's supervision and regulation of educational institutions is that the exercise thereof must be reasonable.

Congress deemed it appropriate to include a provision on age- and development-appropriate reproductive health education as a means to address the rise of teenage pregnancies.[17] In a 2002 survey conducted by the University of the Philippines Population Institute, it was shown that 23% of young people aged 15 to 24 years old had already engaged in pre-marital sex; that pre-marital sex was prevalent among 31.1% of the boys and 15.4°/o among the girls.[18] The survey, after a consideration of other factors, concluded that many young people, despite having inadequate knowledge on reproductive health problems, engage in risky sexual behavior.[19] That, despite having liberal views on sex and related matters, they rarely seek medical help for reproductive health problems.[20] Poignantly, given this factual milieu, the provision on age- and development-appropriate reproductive health education under Section 14 is reasonable.

The importance of integrating the subject of the dangers and dire consequences of alcohol abuse or even the menace of dangerous drugs in the curricula of primary and secondary educational institutions cannot be disputed. The prevalence of teenage pregnancy and the risks surrounding it is just as equally alarming as the dangers of alcohol and substance abuse. Accordingly, I find nothing objectionable in the integration of age- and development-appropriate reproductive health education in the curricula of primary and secondary schools.

The petitioners further assert that Section 14 violates the right to privacy of the parents as it amounts to a denigration of "the sanctity of the family home" and has "usurped the rights and duties of parents to rear and educate their children in accordance with their religious conviction by forcing some rules and State programs for reproductive health contrary to their religious beliefs." The petitioners claim that parents have the primary duty to educate their children, especially on matters affecting reproductive health. They thus allege that the State's interference in such a delicate parental task is unwarranted and should not be countenanced.

It is conceded that parents, as stated earlier, indeed have the natural and primary right and duty in the rearing of their children.[21] The Constitution further affirms such right and duty by mandating that the State, in providing compulsory elementary education for all children of school age, is proscribed from imposing a limitation on the natural rights of parents to rear their children.[22] At the core of the foregoing constitutional guarantees is the right to privacy of the parents in the rearing of their children.

Essentially, the question that has to be resolved is whether the inclusion of age- and development-appropriate reproductive health education in the curriculum of primary and secondary schools violates the right to privacy of the parents in the rearing of their children. The standard to be used in determining the validity of a government regulation, which is claimed to infringe the right to privacy of the people, was explained by the United States (US) Supreme Court in the land mark case of *Griswold v. Connecticut*[23] in this wise:

> The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, **that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.**[24] (Emphasis ours)

Thus, when a government regulation is claimed to infringe on the right to privacy, courts are required to weigh the State's objective against the privacy rights of the people. Although considered a fundamental right, the right to privacy may nevertheless succumb to a narrowly drawn government regulation, which advances a legitimate and overriding State interest.[25]

As explained earlier, Section 14 aims to address the increasing rate of teenage pregnancies in the country and the risks arising therefrom, which is undeniably a legitimate and overriding State interest. The question that has to be asked then is whether Section 14, in advancing such legitimate and overriding State interest, has employed means, which are narrowly tailored so as not to intrude into the right to privacy of the people.

Under Section 14, the formulation of the curriculum on age- and development-appropriate reproductive health education is a collaborative process. It provides "[t]hat flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed **only after consultations with parents-teachers community associations, school officials and other interest groups.**" Section 14 thus takes into account the relevant concerns of parents and

other interest groups in the adoption and implementation of the proposed age- and development-appropriate reproductive health education; any and all objections thereto based on religious beliefs would be considered during the formulation of the curriculum. In this sense, Section 14, in taking into account the relevant concerns of parents and other interest groups in the formulation of the curriculum, has been narrowly tailored so as not to invade the right to privacy of the parents.

Equally untenable is the petitioners' claim that the provision of age and development-appropriate reproductive health education under Section 14 unduly burdens their freedom of religion.[26] A similar claim was resolved by the *Supreme Court of Hawaii in Medeiros v. Kiyosaki*.[27] In Medeiros, Hawaii's Department of Education, as part of its family life and sex education program, exhibits a film series entitled "Time of Your Life" to fifth and sixth grade students in public schools. The plaintiffs therein, parents and guardians of fifth and sixth grade students, sought to enjoin the exhibition of the said film series, claiming, inter alia, that the said program unduly interferes with their religious freedom.

The Supreme Court of Hawaii held that the Department of Education's family life and sex education program does not infringe on the religious freedom of the plaintiffs therein. Relying on the case of *Epperson v. Arkansas*,[28] the Supreme Court of Hawaii stressed that upholding the claim of the plaintiffs therein would amount to tailoring the teaching and learning in their schools to the principles or prohibitions of a religious sect, which is anathema to the non-establishment clause.

Epperson involves a challenge to the constitutionality of the "anti evolution" statute adopted by the State of Arkansas in 1928, which makes it unlawful for a teacher in any State-supported school or university to teach the theory or doctrine that mankind ascended or descended from a lower order of animals, or to adopt or use in any such institution a textbook that teaches this theory. In declaring the statute unconstitutional, the US Supreme Court declared that:

> Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion, and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. **The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.**
>
> **As early as 1872, this Court said: "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."** *Watson v. Jones*, 13 Wall. 679, 80 U.S. 728. This has been the interpretation of the great First Amendment which this Court has applied in the many and subtle problems which the ferment of our national life has presented for decision within the Amendment's broad command.
>
> xxxx
>
> **There is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma**. In *Everson v. Board of Education,* this Court, in upholding a state law to provide free bus service to school children, including those attending parochial schools, said: "Neither [a] State nor the Federal Government can pass laws which aid one religion, aid all religions, or prefer one religion over another." 330 U.S. 1, 330 U.S. 15 (1947)[29](Emphasis ours)

Declaring the provision of an age- and development-appropriate reproductive health education to primary and secondary students unconstitutional on the pretext that it conflicts with the religious convictions of others would amount to an endorsement of religion contrary to the non-establishment clause.[30] The petitioners' claimed infringement of their religious freedom is flawed in two ways: *first*, Section 14 takes into account the religious beliefs of parents by soliciting their participation in the formulation of the curriculum on age- and development-appropriate reproductive health education; and *second*, to permit the petitioners to control what others may study because the subject may be offensive to their religious or moral scruples would violate the non-establishment clause.[31]

The "duty to refer" under Sections 7 and 23(a)(3) does not restrict the freedom of religion.

The *ponencia* declared that the "duty to refer" imposed by Sections 7 and 23(a)(3) of R.A. No. 10354 is repugnant to the constitutional right to freedom of religion and, thus, should be struck down as unconstitutional. The *ponencia* explained that "[o]nee the medical practitioner, against his will, refers a patient seeking information on modem reproductive health products, services, procedures and methods, his conscience is immediately burdened as he has been compelled to perform an act against his beliefs." The *ponencia* further described the said "duty to refer" as "a false compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive."

I do not agree.

In order to properly assess the constitutionality of Sections 7 and 23(a)(3), the provisions thereof must be considered in its entirety. Judicial scrutiny of the subject provisions cannot be delimited to a particular provision thereof, *i.e.*, the "duty to refer,"

lest the Court lose sight of the objectives sought to be achieved by Congress and the ramifications thereof with regard to the free exercise clause. The "duty to refer" must be construed with due regard to the other provisions in Sections 7 and 23(a)(3) and the objectives sought to be achieved by R.A. No. 10354 in its entirety.

The Constitution guarantees that no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof; that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.[32] Religious freedom forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship, and conversely, it safeguards the free exercise of the chosen form of religion.[33]

The twin clauses of free exercise clause and non-establishment clause express an underlying relational concept of separation between religion and secular government.[34] The idea advocated by the principle of separation of church and State is to delineate the boundaries between the two institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. While the State is prohibited from interfering in purely ecclesiastical affairs, the Church is likewise barred from meddling in purely secular matters.[35]

Freedom of religion embraces two aspects - freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be.[36] The free exercise clause does not unconditionally inhibit the State from requiring the performance of an act, or the omission thereof, on religious pretenses.[37] Religious freedom, like all other rights in the Constitution, can be enjoyed only with a proper regard for the rights of others.[38] It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare.[39]

Nonetheless, the State, in prescribing regulations with regard to health, morals, peace, education, good order or safety, and general welfare of the people, must give due deference to the free exercise clause; it must ensure that its regulation would not invidiously interfere with the religious freedom of the people. In such cases, the legitimate secular objectives of the State in promoting the general welfare of the people must be assessed against the religious scruples of the people.

In *Estrada v. Escritor;*[40] the Court held that the standard of benevolent neutrality "is the lens with which the Court ought to view religion clause cases[.]"[41] The Court explained the benevolent neutrality/ accommodation standard in this wise:

> With religion looked upon with benevolence and not hostility, ***benevolent neutrality*** **allows** ***accommodation*** **of religion under certain circumstances. Accommodations are government policies that take religion specifically into account** not to promote the government's favored form of religion, but **to** ***allow individuals and groups to exercise their religion without hindrance.*** Their purpose or effect therefore is to remove a burden on, or facilitate the exercise of a person's or institution's religion. As Justice Brennan explained, the "government [may] take religion into account . . . ***to exempt, when possible, from generally applicable governmental regulation*** **individuals whose religious beliefs and practices would othenvise thereby be infringed**, or to create without state involvement an atmosphere in which voluntary religious exercise may flourish." x x x Accomodation is forbearance and not alliance. It does not reflect *agreement* with the minority, but respect for the conflict between the temporal and spiritual authority in which the minority finds itself.[42] (Emphasis ours and citations omitted)

In ascertaining the limits of the exercise of religious freedom, in cases where government regulations collide with the free exercise clause, the Court further declared that, following the benevolent neutrality/accommodation standard, the "compelling state interest" test should be applied.[43] Under the "compelling state interest test," a State regulation, which is challenged as being contrary to the free exercise clause, would only be upheld upon showing that: (1) the regulation does not infringe on an individual's constitutional right of free exercise; or (2) any incidental burden on the free exercise of an individual's religion maybe justified by a compelling state interest in the regulation of a subject within the State's constitutional power to regulate by means, which imposed the least burden on religious practices.[44]

With the foregoing principles in mind, it is my view that Sections 7 and 23(a)(3) of R.A. No. 10354 does not run afoul of religious freedom. On the contrary, the said provisions explicitly recognize the religious freedom of conscientious objectors by granting accommodation to their religious scruples.

The right to health is a universally recognized human right.[45] In this regard, the Constitution mandates the State to "protect and promote the right to health of the people and instill health consciousness among them."[46] The Constitution further requires the State to "adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost;" that in the provision of health care service to the people, the needs of the underprivileged, sick, elderly, disabled, women, and children should be prioritized.[47]

Heeding the constitutional mandate to protect and promote the right to health of the people, Congress enacted R.A. No. 10354. Section 2 of R.A. No. 10354 thus pertinently states that:

> Section 2. *Declaration of Policy.* - The State **recognizes and guarantees the human rights of all persons including** their right to equality and nondiscrimination of these rights, the right to sustainable human development, **the right to health which includes reproductive health**, the right to education and information, and the right to choose and make decisions for themselves in accordance with their religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood.
>
> x x x x (Emphasis ours)

Particularly, R.A. No. 10354 seeks to provide "effective and quality reproductive health care services and supplies,"[48] which would "ensure maternal and child health, the health of the unborn, safe delivery and birth of healthy children, and sound replacement rate, in line with the State's duty to promote the right to health, responsible parenthood, social justice and full human development."[49] R.A. No. 10354, as a corollary measure for the protection of the right to health of the people, likewise recognizes necessity to "promote and provide information and access, without bias, to all methods of family planning."[50] Primarily, the objective of R.A. No. 10354 is to provide marginalized sectors of society, particularly the women and the poor, access to reproductive health care services, and to health care in general, of which they have been deprived for many decades due to discrimination and lack of access to information.[51]

Sections 7 and 23(a)(3) effectuate the foregoing objectives that R.A. No. 10354 seeks to attain. Section 7, as stated earlier, facilitates the access by the public, especially the poor and marginalized couples having infertility issues desiring to have children, to modem family planning methods. It thus mandates all accredited public health facilities to provide a full range of modem family planning methods, which includes medical consultations, supplies and procedures. Private health facilities are likewise required to extend family planning services to paying patients.

On the other hand, Section 23(a)(3) penalizes the refusal of any health care service provider to extend quality reproductive health care services and information on account of the patient's marital status, gender, age, religious convictions, personal circumstances, or nature of work. Thus:

> Section 23. *Prohibited Acts.*- The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> > xxxx
> >
> > (3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: ***Provided*, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible:** *Provided, further,* That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases;
> >
> > x x x x (Emphasis ours)

Nevertheless, although Section 7 provides "that family planning services shall likewise be extended by private health facilities to paying patients," it nevertheless exempts "non-maternity specialty hospitals and **hospitals owned and operated by a religious group**" from providing full range of modem family planning methods. Instead, Section 7 imposes on non-maternity specialty hospitals and hospitals owned and operated by a religious group the duty to immediately refer patients seeking reproductive health care and services to another health facility that is conveniently accessible.

In the same manner, the prohibition imposed under Section 23(a)(3) is not absolute; it recognizes that a health care service provider may validly refuse to render reproductive health services and information if he/she conscientiously objects thereto "based on his/her ethical or religious beliefs." Nevertheless, Section 23(a)(3) likewise imposes a corresponding duty on such conscientious objector to immediately refer the person seeking reproductive health services to another health care service provider within the same facility or one, which is conveniently accessible.

It cannot be denied that the State has a legitimate interest in the promotion and protection of the right to reproductive health of the people. The question that has to be resolved then is whether such interest can be considered compelling as to justify any incidental burden on the free exercise of religion.

The determination of whether there exists a compelling state interest that would justify an incidental burden involves balancing the interest of the State against religious liberty to determine which is more compelling under the particular set of facts. In assessing the state interest, the court will have to determine the importance of the secular interest and the extent to which that interest will be impaired by an exemption for the religious practice.[52]

Accordingly, the supposed burden on the religious freedom of conscientious objectors in complying with the "duty to refer" would have to be weighed against the State's interest in promoting the right of the people to reproductive health.

According to the 2010 State of World Population prepared by the United Nations Population Fund, in the Philippines, 230 mothers die out of every 100,000 live births while 21 infants die out of every 1,000 live births.[53] Daily, there are about 15 women dying due to childbirth and pregnancy related complications.[54] About 11% of all deaths among women of reproductive age in the Philippines are due to maternal death.[55] Further, for every minute, 3 babies are born, and for every 1000 babies born, 33 die before reaching age five. [56] The foregoing statistics paints a harrowing tale of the state of the country's reproductive health. It is quite unfortunate that the country has a high rate of maternal and infant deaths, when it can be significantly reduced with proper and effective reproductive health care.

No less distressing is the state of unintended pregnancies, and its equally harrowing consequences, in the country. According to a study prepared by the Alan Guttmacher Institute (AGI), there were 1.9 million unintended pregnancies in the Philippines in 2008, resulting in two main outcomes-unplanned births and unsafe abortions. In the Philippines, 37% of all births are either not wanted at the time of pregnancy (mistimed) or entirely unwanted, and 54% of all pregnancies are unintended. The AGI further discovered that, on average, Filipino women give birth to more children than they want, which is particularly striking among the poorest Filipino women, who have nearly two children more than they intend to have.[57]

The AGI stressed that the foregoing statistics can be attributed to low contraceptive use and high levels of unmet need for contraception. The AGI pointed out that in 2008, more than 90% of unintended pregnancies occurred among women using traditional, ineffective methods or no method at all. The study further showed that poor women are less likely to use a contraceptive method than non-poor women (43% vs. 51%), and in regions where poverty is common, contraceptive use is substantially lower than the national average--*e.g.*, 38% in the Zamboanga Peninsula and 24% in the Autonomous Region in Muslim Mindanao. [58]

The present condition of the country's reproductive health care, taken together with the Constitution's mandate to promote and protect the right to health of the people, constitutes a compelling state interest as would justify an incidental burden on the religious freedom of conscientious objectors. Sections 7 and 23(a)(3) of R.A. No. 10354 were crafted to ensure that the government's effort in disseminating information and providing access to services and programs on reproductive health would not be stymied. The said provisions seek to improve the condition of the reproductive health care in the country.

Nevertheless, Congress recognized that, in enacting regulations to further the reproductive health of the people, including access to modem family planning methods, resistance thereto based on religious scruples would abound. Notwithstanding the presence of a compelling state interest in the promotion and protection of reproductive health, Congress deemed it proper to carve out exemptions that specifically take into account the religious dissensions of conscientious objectors, which effectively exempts them from the requirements imposed under Sections 7 and 23(a)(3). In this regard, it cannot thus be claimed that the said provisions invidiously interfere with the free exercise of religion.

Nevertheless, it cannot be denied that the government's effort to provide increased access to information, programs, and services regarding reproductive health would be seriously hampered by the exemption accorded to conscientious objectors. A considerable number of health facilities in the country are owned and operated by religious institutions. Likewise, being a predominantly Catholic country, there are a considerable number of health service providers who, due to their religious convictions, view modem methods of family plarming, a major component of reproductive health under R.A. No. 10354, as immoral.

In view of the accommodation granted to conscientious objectors under Sections 7 and 23(a)(3), a great portion of the public would still be denied access to information, programs, and services regarding reproductive health, thus, effectively defeating the lofty objectives of R.A. No. 10354. Thus, Congress, still recognizing the religious freedom of conscientious objectors, instead imposed on them the "duty to refer" the patients seeking reproductive health care and service to another health facility or reproductive health care service provider. Under the circumstances, the "duty to refer" imposes the least possible interference to the religious liberties of conscientious objectors.

Thus, the "duty to refer" imposed by Sections 7 and 23(a)(3) does not invidiously interfere with the religious freedom of conscientious objectors; any discomfort that it would cause the conscientious objectors is but an incidental burden brought about by the operation of a facially neutral and secular regulation. Not all infringements of religious beliefs are constitutionally impermissible. Just as the religious freedom of conscientious objectors must be respected, the higher interest of the State should likewise be afforded utmost protection.

Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved an individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs.[59] particularly in this case where the provisions in

question have already given accommodation to religious dissensions. Values that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process.[60]

Further, the health care industry is one that is imbued with public interest. Their religious scruples aside, health facilities and health care service providers owe it to the public to give them choice on matters affecting reproductive health. Conscientious objectors carmot be permitted to impose their religious beliefs on others by denying them the choice to do so as it would amount to according a preferred status to their rights over the rights of others.

The duty to provide information regarding programs and services on reproductive health under Section 23 (a)(l) does not run afoul of religious freedom.

Section 23(a)(1)[61] punishes any health care service provider who either: (1) knowingly withhold information regarding programs and services on reproductive health; (2) knowingly restrict the dissemination of information regarding programs and services on reproductive health; and/or (3) intentionally provide incorrect information regarding programs and services on reproductive health.

The *ponencia* struck down Section 23(a)(l) as being unconstitutional as it supposedly impinges on the religious freedom of health care service providers. That in the dissemination of information regarding programs and services on reproductive health, the religious freedom of health care service providers should be respected.

I do not agree.

Contrary to the insinuation of the *ponencia*, Section 23(a)(l) does not compel health care service providers to violate their religious beliefs and convictions. Section 23(a)(l) does not absolutely prohibit a health care service provider from withholding information regarding programs and services on reproductive health.

A rule of statutory construction is that a statute must be construed as a whole. The meaning of the law is not to be extracted from a single part, portion or section or from isolated words and phrases, clauses or sentences, but from a general consideration or view of the act as a whole. Every part of the statute must be interpreted with reference to the context.[62] In line with this rule, Section 23(a)(l) should be read in conjunction with Section 23(a)(3), which provides that "the conscientious objection of a health care service provider based on his/her ethical or religious belief shall be respected."

Accordingly, a health care service provider who conscientiously objects, based on his/her ethical or religious beliefs, to programs and services regarding reproductive health is exempted from the effects of Section 23(a)(l) **only insofar as it punishes a health care service provider who knowingly withholds information** on said programs and services. Section 23(a)(l), in relation to Section 23(a)(3), recognizes that a conscientious objector cannot be compelled to provide information on reproductive health if the same would go against his/her religious convictions. In such cases, however, the conscientious objector, pursuant to Section 23(a)(3), has the correlative duty to immediately refer the person seeking information on programs and services on reproductive health to another health care service provider within the same facility or one which is conveniently accessible.

However, a health care service provider who knowingly restricts the dissemination of information or intentionally provides incorrect information on programs and services regarding reproductive health, though the said acts are based on his/her conscientious objections, would still be liable under Section 23(a)(1).

Section 23(a)(1) recognizes the primacy of the right of an individual to be informed and, accordingly, exercise his/her right to choose and make decisions on matters affecting his/her reproductive health. The provision aims to assure that every Filipino will have access to unbiased and correct information on the available choices he/she have with regard to reproductive health.[63]

It is conceded that the rights of those who oppose modem family planning methods, based on ethical or religious beliefs, should be respected. This is the reason why Section 23(a)(1), in relation to Section 23(a)(3), exempts a conscientious objector from the duty of disclosing information on programs and services regarding reproductive health.

However, such accommodation does not give license to the conscientious objectors to maliciously provide wrong information or intentionally restrict the dissemination thereof to those who seek access to information or services on reproductive health. Just as their rights must be respected, conscientious objectors must likewise respect the right of other individuals to be informed and make decisions on matter affecting their reproductive health. The freedom to act on one's belief, as a necessary segment of religious freedom, like all other rights, comes with a correlative duty of a responsible exercise of that right. The recognition of a right is not free license for the one claiming it to run roughshod over the rights of others.[64]

Further, it cannot be gainsaid that the health care industry is one, which is imbued with paramount public interest. The State, thus, have the right and duty to ensure that health care service providers would not knowingly restrict the dissemination of information or intentionally provide incorrect information on programs and services regarding reproductive health on the pretense of their religious scruples.

Section 23(b) and Section 5.24 of the IRR are not anathema to the equal protection clause.

Section 23(b)[65] penalizes any public officer specifically charged with the implementation of the provisions of R.A. No. 10354 who either: (1) restricts or prohibits the delivery of reproductive health care services; (2) forces, coerces or induces any person to use reproductive health care services; (3) refuses to allocate, approve or release any budget for reproductive health care services; (4) refuses to support reproductive health programs; or (5) does any act that hinders the full implementation of a reproductive health program.

On the other hand, the last paragraph of Section 5.24 of the IRR, provides that "[public] skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of [R.A. No. 10354 and its IRR] cannot be considered as conscientious objectors."

The *ponencia* declared Section 23(b) and the last paragraph of Section 5.24 of the IRR as unconstitutional for being violative of the equal protection clause. The *ponencia* held that the "conscientious objection clause" under Section 23(a)(3) "should equally be protective of the religious belief of public health officers;" that the "protection accorded to other conscientious objectors should equally apply to all medical practitioners without distinction whether he belongs to the public or private sector."

I do not agree.

Equal protection simply provides that all persons or things similarly situated should be treated in a similar manner, both as to rights conferred and responsibilities imposed. The purpose of the equal protection clause is to secure every person within a State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities.[66]

Persons or things ostensibly similarly situated may, nonetheless, be treated differently if there is a basis for valid classification.[67] The legislature is allowed to classify the subjects of legislation; if the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause.[68] Classification, to be valid, must (1) rest on substantial distinctions, (2) be germane to the purpose of the law, (3) not be limited to existing conditions only, and (4) apply equally to all members of the same class.[69]

Contrary to the *ponencia 's* ratiocination, I find that a valid classification exists as would justify the withholding of the religious accommodation extended to health care service providers under Section 23(a)(3) from public officers who are specifically charged with the implementation of the provisions ofR.A. No. 10354 and its IRR.

There is a substantial distinction as regards a conscientious objector under Section 23(a)(3), who may be a public or private health care service provider, and a public officer specifically charged with the duty to implement the provisions of R.A. No. 10354 and its IRR. The Constitution provides that a public office is a public trust.[70] An important characteristic of a public office is that its creation and conferment involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; that some portion of the sovereignty of the country, either legislative, executive, or judicial, attaches, for the time being, to be exercised for the public benefit.[71]

That a public officer is specifically delegated with the a sovereign function of the government, i.e. the implementation of the provisions of RA 10354 and its IRR, is what sets him apart from a health care service provider under Section 23(a)(3). It should be clarified, however, that the religious accommodation extended to conscientious objectors under Section 23(a)(3) covers public health care service providers, who are likewise considered public officers.[72] However, unlike the public officers under Section 23(b) and Section 5.24 of the IRR, public health care service providers under Section 23(a)(3) are not specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR.

Further, classifying a public officer charged with the implementation of the provisions of R.A. No. 10354 and its IRR apart from health care service providers under Section 23(a)(3) is not only germane, but also necessary to the purpose of the law. To reiterate, the primary objective of R.A. No. 10354 is to provide an increased access to information, programs, and services regarding reproductive health. Allowing the same religious accommodation extended under Section 23(a)(3) to public officers charged with the implementation of the law would seriously hamper the delivery of the various programs and services regarding reproductive health under R.A. No. 10354. In this regard, a public officer specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR is considered an agent of the State; he cannot thus be allowed to effectively frustrate the legitimate interest of the State in enacting R.A. No. 10354 by refusing to discharge the sovereign functions delegated to him to the detriment of the public.

Moreover, the duration of the said classification is not limited to existing conditions. Also, the prohibition imposed under Section 23(b) and Section 5.24 of the IRR applies equally to all public officers specifically charged with the implementation of the law. Accordingly, the equal protection claim against Sections 23(b) and 5.24 of the IRR must evidently fail.

I agree though with the ponencia 's declaration that "the freedom to believe is intrinsic in every individual and the protective robe that guarantees its free exercise is not taken off even if one acquires employment in the government." Indeed, it is undeniable that a man does not shed his spirituality once he assumes public office. However, it cannot equally be denied that the State, in the pursuit of its legitimate secular objectives, should not be unnecessarily impeded by the religious scruples of its agents. Pursuant to the principle of separation of Church and State, it is not only the State that is prohibited from in purely ecclesiastical affairs; the Church is likewise barred from meddling in purely secular matters.[73]

Thus, in *People v. Veneracion,*[74] the Court, in resolving the question of whether a judge, after a finding that the accused had committed a crime punishable by the penalty of death, when the death penalty law was still in effect, has the discretion to impose the penalty of reclusion perpetua on account of his religious beliefs, stated that:

> We are aware of the trial judge's misgivings in imposing the death sentence because of his religious convictions. While this Court sympathizes with his predicament, it is its bounden duty to emphasize that a court of law is no place for a protracted debate on the morality or propriety of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances. The discomfort faced by those forced by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice. Courts are not concerned with the wisdom, efficacy or morality of laws. x x x.[75]

Reason demands that public officers who are specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR be classified differently from public and private health care service providers under Section 23(a)(3); they cannot be allowed to avail of the religious accommodation granted to conscientious objectors lest the lofty objectives of the law be disparaged. Any discomfort that would be caused to such public officers is but a mere incidental burden in the exercise of their religious belief, which is justified by the compelling state interest in the enactment ofR.A. No. 10354.

Section 23(a)(2) punishes the refusal to perform reproductive health procedures due to lack of spousal consent and/or parental consent; it is not inimical to freedom of religion.

Section 23(a)(2)[76] penalizes any health care service provider who refuses to perform legal and medically-safe reproductive health procedures on the ground of lack of consent or authorization of either: (1) the spouse, in the case of married persons; or (2) the parents or person exercising parental authority, in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused, or convicted perpetrator.

The *ponencia* struck down Section 23(a)(2) for being unconstitutional, pointing out that, "in the performance of reproductive health procedures, the religious freedom of health care service providers should be respected." The ponencia 's conclusion stems from a misapprehension of the acts penalized under Section 23(a)(2); it does not, in any manner, invidiously interfere with the religious rights of health care service providers.

Section 23(a)(2) does not penalize the refusal of a health care service provider to perform reproductive health procedures *per se*. What is being penalized by the provision is the refusal of a health care service provider to perform such procedures **on the ground of lack of spousal consent** or parental consent in certain cases. Indeed, for reasons to be explained at length later, a health care service provider cannot avoid the performance of reproductive health procedure, in case of married persons, **solely** on the ground of lack of spousal consent since there would be no justifiable reason for such refusal.

Likewise, it is quite absurd to expect that the parent of or one exercising parental authority over an abused minor would give consent for the latter's reproductive health procedure if he/she is the one responsible for the abuse. Thus, Section 23(a)(2) dispenses with the requirement of parental authority from the abusive parent or person exercising parental authority. In such case, a health care service provider cannot refuse the performance of reproductive health procedure on the abused minor solely on the ground of lack of parental consent.

Nevertheless, even in cases where the individual seeking reproductive health procedure is married or is an abused minor, a health care service provider **may validly refuse to perform such procedure if the objection thereto is based on his/her ethical or religious beliefs**. Section 23(a)(2) must be read in conjunction with Section 23(a)(3), which provides for religious accommodation of conscientious objectors. However, in such cases, the health care service provider would still have the duty to immediately refer the married individual or the abused minor to another health care service provider within the same facility or one, which is conveniently accessible.

Section 23(a)(2)(i) merely upholds the primacy of an individual's choice on matters affecting his/her health; it does not intrude into the right to marital privacy.

Essentially, Section 23(a)(2)(i)77 provides that a married individual may undergo a reproductive health procedure sans the consent/authorization of his/her spouse; that any health care service provider who would obstinately refuse to perform such procedure on a married individual on the pretext of the lack of spousal consent would be penalized accordingly.

The *ponencia* declared Section 23(a)(2)(i) as being contrary to Section 3, Article XV of the Constitution, which requires the State to defend the "right of the spouses to found a family," thus unduly infringing on the right to marital privacy. The *ponencia* explained that the said provision "refers to reproductive health procedures like tubal ligation and vasectomy which, by their very nature, require mutual consent and decision between the husband and wife as they affect issues intimately related to the founding of the family." The *ponencia* pointed out that decision-making concerning reproductive health procedure "falls within the protected zone of marital privacy" from which State intrusion is proscribed. Thus, the ponencia concluded, dispensing with the spousal consent is "disruptive of family unity" and "a marked departure from the policy of the State to protect marriage as an inviolable social institution."

It is conceded that intimate relations between husband and wife fall within the right of privacy formed by emanations of the various guarantees in the Bill ofRights, to which State intrusion is proscribed.[78] However, I do not agree that upholding a married individual's choice to submit to reproductive health procedure despite the absence of the consent or authorization of his/her spouse would be disruptive of the family.

The *ponencia* harps on the right to privacy that inheres in marital relationships. Yet the marital couple is not an independent entity, with a mind and heart of its own, but an association of two individuals, each with a separate intellectual and emotional makeup.[79] While the law affirms that the right of privacy inheres in marital relationships, it likewise recognizes that a spouse, as an individual per se, equally has personal autonomy and privacy rights apart from the right to marital privacy guaranteed by the Constitution. **A spouse's personal autonomy and privacy rights**, as an individual *per se,* among others, necessitates that his/her decision on matters affecting his/her health, including reproductive health, be respected and given preference.

At the heart of Section 23(a)(2)(i) is the fundamental liberty of an individual to personal autonomy, *i.e.*, to decide on matters affecting his/her reproductive health. Section 23(a)(2)(i), contrary to the ponencia 's insinuation, does not hinder a married individual from conferring with his/her spouse on his/her intended reproductive health procedure. There is nothing in the said provision, which prevents a husband/wife from obtaining the consent/authorization for an intended reproductive health procedure. Nevertheless, the objection of the other spouse thereto, as common sense would suggest, should not prevent a married individual from proceeding with the reproductive health procedure since it is his/her bodily integrity that is at stake.

In this regard, the ruling of the US Supreme Court *Planned Parenthood v. Danforth*[80] is instructive. *Danforth* involves a Missouri abortion statute, which, *inter alia*, required the written consent of the husband before a woman may be allowed to submit to an abortion81 during the first 12 weeks of pregnancy. The US Supreme Court declared the spousal consent requirement unconstitutional for unduly intruding into the right to privacy of the woman. Thus:

> We now hold that the State may not constitutionally require the consent of the spouse, as is specified under § 3(3) of the Missouri Act, as a condition for abortion during the first 12 weeks of pregnancy. We thus agree with the dissenting judge in the present case, and with the courts whose decisions are cited above, that **the State cannot delegate to a spouse a veto power which the state itself is absolutely and totally prohibited from exercising** during the first trimester of pregnancy.
>
> x x x Clearly, since the State cannot regulate or proscribe abortion during the first stage, when the physician and his patient make that decision, the State cannot delegate authority to any particular person, even the spouse, to prevent abortion during that same period.
>
> We are not unaware of the deep and proper concern and interest that a devoted and protective husband has in his wife's pregnancy and in the growth and development of the fetus she is carrying. Neither has this Court failed to appreciate the importance of the marital relationship in our society. x x x Moreover, we recognize that the decision whether to undergo or to forgo an abortion may have profound effects on the future of any marriage, effects that are both physical and mental, and possibly deleterious. **Notwithstanding these factors, we cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy when the State itself lacks that right**.x x x.
>
> **It seems manifest that, ideally, the decision to terminate a pregnancy should be one concurred in by both the wife and her husband. No marriage may be viewed as harmonious or successful if the marriage partners are fundamentally divided on so important and vital an issue. But it is difficult to believe that the goal of fostering mutuality and trust in a marriage, and of strengthening the marital relationship and the marriage institution, will be achieved by giving the husband a veto power exercisable for any reason whatsoever or for no reason at all**. Even if the State had the ability to delegate to the husband a power it itself could not exercise, it is not at all likely that such action would further, as the District Court majority phrased it, the "interest of the state in protecting the mutuality of decisions vital to the marriage relationship."
>
> xxxx
>
> We recognize, of course, that, when a woman, with the approval of her physician but without the approval of her husband, decides to terminate her pregnancy, it could be said that she is acting unilaterally. **The obvious fact is that, when the wife and the husband disagree on this decision, the view of only one of the two marriage partners can**

prevail. Inasmuch as it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor. x x x.

(Emphases ours)[82]

It is indeed ideal that the decision whether to submit to reproductive health procedure be a joint undertaking of the spouses, especially on such a vital and sensitive matter. It is inevitable, however, for cases to abound wherein a husband/wife would object to the intended procedure of his/her spouse. In such cases, the right to reproductive health of a spouse would be rendered effectively inutile. I do not see how fostering such stalemate, which can hardly be considered as a harmonious and blissful marital relationship, could "protect the marriage as an inviolable social institution."

Thus, the law, in case of disagreement, recognizes that the decision of the spouse undergoing the reproductive health procedure should prevail. In so declaring, Section 23(a)(2)(i) does not invidiously interfere with the privacy rights of the spouses. In dispensing with the spousal consent/authorization in case of disagreement, the law is not declaring a substantive right for the first time; even in the absence of such declaration, the decision of the spouse undergoing the reproductive health procedure would still prevail. Section 23(a)(2)(i) is but a mere recognition and affirmation of a married individual's constitutionally guaranteed personal autonomy and his/her right to reproductive health.

Requiring the rendition of *pro bono* reproductive health services to indigent women for PhilHealth accreditation does not infringe on religious freedom.

Section 17 encourages private and non-government reproductive health care service providers "to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing information and education to rendering medical services, free of charge to indigent and low-income patients." It further mandated that the *pro bono* reproductive health services shall be included as a prerequisite in the accreditation under the PhilHealth.

The *ponencia* declared that Section 17, contrary to the petitioners' stance, does not amount to involuntary servitude; that it merely encourages reproductive health care service providers to render *pro bono* services. The ponencia likewise held that requiring the rendition of said *pro bono* services for PhilHealth accreditation is not an unreasonable burden, but a necessary incentive imposed by Congress in the furtherance of a legitimate State interest. Nevertheless, the *ponencia* declared Section 17 unconstitutional insofar as it affects conscientious objectors in securing PhilHealth accreditation; that conscientious objectors are exempt from rendition of reproductive health services, *pro bono* or otherwise.

While I agree with the *ponencia* that Section 17 does not amount to involuntary servitude and that requiring the rendition of *pro bono* reproductive health services for PhilHealth accreditation is not an unreasonable burden to health care service providers, I disagree that Section 17 is unconstitutional as applied to conscientious objectors.

As pointed out earlier, it is conceded that health care service providers may not be compelled to provide certain information or service regarding reproductive health if it would be anathema to his/her religious convictions. Specifically, under Section 17, a health care service provider may not be denied the opportunity to be accredited under R.A. No. 7875, otherwise known as the National Health Insurance Act of 1995, as amended by R.A. No. 10606, for his/her refusal to render *pro bono* reproductive health services **that are contrary to his/her religious beliefs.**

However, that a health care service provider has religious objections to **certain reproductive health care services** does not mean that he/she is already exempted from the requirement under Section 17 for PhilHealth accreditation. The requirement under Section 17 is stated in general terms and is religion-neutral; it merely states that health care service providers, as a condition for PhilHealth accreditation, must render *pro bono* reproductive health service. The phrase "reproductive health care service" is quite expansive and is not limited only to those services, which may be deemed objectionable based on religious beliefs.

Reproductive health care includes: (1) family planning information and services; (2) maternal, infant and child health and nutrition, including breastfeeding; (3) proscription of abortion and management of abortion complications; (4) adolescent and youth reproductive health guidance and counseling; (5) prevention, treatment, and management of reproductive tract infections, HIV and AIDS, and other sexually transmittable infections; (6) elimination of violence against women and children, and other forms of sexual and gender-based violence; (7) education and counseling on sexuality and reproductive health; (8) treatment of breast and reproductive tract cancers, and other gynecological conditions and disorders; (9) male responsibility and involvement, and men's reproductive health; (10) prevention, treatment, and management of infertility and sexual dysfunction; (11) reproductive health education for adolescents; and (12) mental health aspect of reproductive health care.[83]

Thus, a health care service provider, his/her religious objections to certain reproductive health care services aside, may still render *pro bono* reproductive health care service, as a prerequisite for PhilHealth accreditation, by providing information or medical services, for instance, on treatment of breast and reproductive tract cancers, and other gynecological conditions and disorders or on maternal, infant and child health and nutrition.

ACCORDINGLY, I vote to **DECLARE UNCONSTITUTIONAL only** Section 7 of Republic Act No. 10354, insofar as it dispenses with the requirement of parental consent for minors who are already parents or have had a miscarriage, for being contrary to Section 12, Article II of the Constitution.

---

[1] Section 9. *The Philippine National Drug Formulary System and Family Planning Supplies.* - The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) sh all be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.

These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: *Provided, further,* That the foregoing offices shall not purchase or acq uire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent.

[2] Section 15. *Certificate of Compliance*. -No marriage license shall be issued by the Local Civil Registrar unless the applicans present a Certificate of Compliance issued for free by the local Family Planning Office certifying that they had duly received adequate instructions and information on responsible pa renthood, family planning, breastfeeding and infant nutrition.

[3] Section 17. *Pro Bono Services for indigent Women.* - Private and nongovernment reproductive healthcare service providers includ ing, but not limited to, gynecologists and obstetricians, are encouraged to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing in formation and education to rendering medical services, free of charge to indigent and low-income patients as identified through the NHTS-PR and other government measures of identifying marginalization, especially to pregnant adolescents. The forty-eight (48) hours annual *pro bono* services shall be included as a prerequisite in the accreditation under the PhilHealth.

[4] Section 5. *Hiring of Skilled Health Professionals for Maternal Health Care and Skilled Birth Attendance*. - The LGUs shall end eavor to hire an adequate number of nurses, m idwives and other skilled health professionals for maternal health care and skilled birth attenda nce to achieve an ideal skilled health professional-to-patient ratio taking into consideration DOH targets: *Provided,* That people in geographica lly isolated or highly populated a nd depressed areas shall be provided the same level of access to health care: *Provided, further*, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

xxxx

[5] Section 6. *Health Care Facilities.* -Each LGU, upon its determination of the necessity based on well-supported data provided by its local health office shall endeavor to establish or upgrade hospitals and facilities with adequate and qualified personnel, equipment and supplies to be able to provide emergency obstetric and newborn care: *Provided,* That people in geographically isolated or highly populated and depressed areas shall have the same level of access and shall not be neglected by providing other means such as home visits or mobile health care clinics as needed: *Provided, further*, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

[6] Section 16. *Capacity Building of Barangay Health Workers (BHWs)*. - The DOH shall be responsible for disseminating information and providing training programs to the LGUs. The LGUs, with the technical assistance of the DOH, shall be responsible for the training of BHWs and other barangay volunteers on the promotion of reproductive health. The DOH shalJ provide the LGUs with medical supplies and equipment needed by BHWs to carry out their functions effectively: *Provided, further,* That the national government shall provide additionaJ and necessary funding and other necessary assistance for the effective implementation of this provision including the possible provision of additional honoraria for BHWs.

[7] Executive Order No. 209.

[] FAMILY CODE, Article 220(4) and (6).

[9] FAMILY CODE, Article 228(3).

[10] FAMILY CODE, Article 234, as amended by Republic Act No. 6809.

[11] *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

[12] *Parham v. J.R.,* 442 U.S. 584, 604 (1977).

[13] Section 14. *Age- and Development-Appropriate Reproductive Health Education.* - The State shall provide age- and development-appropriate reproductive health education to adolescents which shall be taught by adequately trained teachers informal and nonformal educational system and integrated in relevant subjects such as, but not limited to, values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women 's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood: *Provided,* That flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents teachers-community associations, school officials and other interest groups. The Department of Education (DepED) shall formulate a curriculum which shall be used by public schools and may be adopted by private schools.

[14] Section 4(b) of R.A. No. 10354 defines the term "adolescent" as referring to "young people between the ages often (10) to nineteen (19) years who are in transition from childhood to adulthood."

[15] Petition (G.R. No. 205478), *Echavez, MD., et al. v. Ochoa, Jr., et al.* , pp. 13-14.

[16] *Mercado v. AMA Computer College-Paranaque City, Inc.,* G.R. No. 183572, April13, 2010, 618 SCRA 218, 236; *Miriam College Foundation, Inc. v. Court of Appeals,* 401 Phil. 431, 455-456 (2000).

[17] Senate Journal, Session No. 25, October 15, 2012, Fifteenth Congress, p. 565.

[18] Sponsorship speech of Senator Miriam Defensor-Santiago on Senate Bill 2865, the senate version of R.A. No. 10354, citing Young Adolescent Fertility Survey 2002 by UP Population Institute; http:1/miriam.com.phlnewsblog/2011/08/17/the-reproductive-health-act-sponsorship-speech-parts-2-and-3/, last accessed on March 24, 2014.

[19] ld.

[20] Id.

[21] CONSTITUTION, Article Jl, Section 12.

[22] CONSTITUTION, Article XIV, Section 2(2).

[23] 381 u.s. 479 (1968).

[24] Id.

[25] *See Gamboa v. Chan*, G.R. No. 193636, July 24, 2012, 677 SCRA 385, 399; *Ople v. Torres*, 354 Phil. 948 (1998); *Morfe v. Mutuc, et al.,* 130 Phil. 415 (1968).

[26] Petition (G.R. No. 205478), Echavez, *MD., et al. v. Ochoa, Jr., et al.,* p. 4.

[27] 478 P.2d 314 (1970).

[28] 393 U.S. 97 (1968).

[29] Id.

[30] *See Edwards v. Aguillard,* 482 U.S. 578 (1987).

[31] *See* also *Smith v. Ricci,* 89 N.J. 514 (1982) where the Supreme Court of New Jersey upheld the State's "family life education program" in the public elementary and secondary curricula over objections that it infringes on the religious freedom of the parents.

[32] CONSTITUTION, Article III, Section 5.

[33] *See* Corwin, The Constitution and What It Means Today, 14th ed., p. 97, citing *Cantwell v. Connecticut,* 310 U.S. 296 at 303 (1940).

[34] Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 ed., p. 314.

[35] *See Austria v. National Labor Relations Commission,* 371 Phil. 340, 353 (1999); Cruz, Constitutional Law, 2000 ed., pp.

178-179.

[36] *Cantwell v. Connecticut,* 310 U.S. 296 (1940).

[37] *See Reynolds v. United States*, 98 U.S. 145 (1879); *Prince v. Massachusetts,* 321 U.S. 158 (1944); *Employment Division v. Smith*, 494 U.S. 872 (1990).

[38] Cruz, Constitutional Law, 2000 ed., p. 187.

[39] Id.

[40] 455 Phil. 411 (2003).

[41] ld. at 576.

[42] Id. at 522-523.

[43] Id. at 577-578.

[44] *Braunfeld v. Brown*, 366 U.S. 599 (1961); *Sherbert v. Verner*, 374 U.S. 398 (1963).

[45] Article 25 of the United Nations' Universa1 Declaration of Human Rights states that:

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

[46] CONSTITUTION, Article II, Section 15.

[47] CONSTITUTION, Article XIII, Section 11.

[48] R.A. No. 10354, Section 3(d).

[49] R.A. No. 10354, Section 3(c).

[50] R.A. No. 10354, Section 3(e).

[51] Senate Journal, Session No. 18, September 13, 2011, Fifteenth Congress, p. 292.

[52] *Estrada v. Escritor* , supra note 40 at 531.

[53] Comment-in-Intervention, The Filipino Catholic Voices for Reproductive Health, Inc., pp. 36-37.

[54] Id. at 37.

[55] Sponsorship speech of Senator Miriam Defensor-Santiago on Senate Bill 2865, the senate version of R.A. No. 10354; http://miriam.com.phlnewsblogl2011/08/17/the-reproductive-health-act-sponsorship speech-parts-2-and-3/, last accessed on March 24, 2014.

[55] Sponsorship speech of Senator Pia S. Cayetano on Senate Bill 2865, the senate version of R.A. No. 10354; http://senatorpiacayetano.com/?p=412, last accessed on March 24, 2014.

[57] Unintended Pregnancy and Unsafe Abortion in the Philippines: Context and Consequences;http://www.guttmacher.orglpubs/IB-unintended-pregnancy-philippines.html, last accessed on March 24, 2014.

[58] Id.

[59] *Employment Division v. Smith,* supra note 37.

[60] Id.

[61] SEC. 23. *Prohibited Acts*.-The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

> (1) Knowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;
>
> xxxx

[62] *Aquino v. Quezon City,* 529 Phil. 486, 498 (2006).

[63] Senate Journal, Session No. 27, October 5, 2011, Fifteenth Congress, p. 433.

[64] *Tulfo v. People*, G.R. No. 161032, September 16, 2008, 565 SCRA 283, 305.

[65] Section 23. *Prohibited Acts*. -The following acts are prohibited:

xxxx

(b) Any public officer, elected or appointed, specifically charged with the duty to implement the

provisions hereof, who, personally or through a subordinate, prohibits or restricts the delivery of legal and medically-safe reproductive health care services, including family planning; or forces, coerces or induces any person to use such services; or refuses to allocate, approve or release any budget for reproductive health care services, or to support reproductive health programs; or shall do any act that hinders the full implementation of a reproductive health program as mandated by this Act;

xxxx

[66] *Bureau of Customs Employees Association (BOCEA) v. Teves,* G.R. No. 181704, December 6, 2011, 661 SCRA 589, 609.

[67] Nachura, Outline Reviewer in Political Law, 2006 ed., p. 95.

[68] *Epperson v. Arkansas,* supra note 28, at 126.

[69] *Tiu v. Court of Appeals,* 361 Phil. 229, 242 (1999).

[70] CONSTITUTION, Article XI, Section 1.

[71] See Cruz, The Law on Public Officers, 2007 ed., p. 3.

[72] Section 5.24 of the IRR recognizes that public officers, *i.e.*, public skilled health professionals may be conscientious objectors, albeit after complying with certain requisites, *viz*:

Section 5.24. *Public Skilled Health Professional as a Conscientious Objector*. In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skilled health professional shall comply with the following requirements:

a) The skilled health professional shall explain to the client the limited range of services he/she can provide;

b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;

c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client 's travel arrangements and financial capacity;

d) Written documentation of compliance with the preceding requirements; and e) Other requirements as determined by the DOH.

In the event where the public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay.

[73] Cruz, Constitutional Law, 2000 ed., p. 179.

[74] 319 Phil. 364 (1995).

[75] Id. at 373.

[76] SEC. 23. Prohibited Acts. - The following acts are prohibited:

(a) Any health care service provider, whether public or private, who shall:

xxxx

(2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:

(i) Spousal consent in case of married persons: *Provided,* That in case of disagreement, the decision of the one undergoing the procedure shall prevail; and

(ii) Parental consent or that of the person exercisin g parental authority in the case of ab used minors, where the parent or the person exercisi ng parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court. In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures and in no case shall consent be required in emergency or serious cases as defined in Republic Act No. 8344; and

xxxx

[77] Id.

[78] *See Griswold v. Connecticut*, supra note 23.

[79] *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

[80] 428 U.S. 52 (1976); see also *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

[81] In the US, Abortion, pursuant to *Roe v. Wade*, (410 U.S. 113 [1973]) is a recognized right of the woman before a fetus is viable outside the womb, which is generally during the first trimester of the pregnancy.

[82] Id.

[83] R.A. No. 10354, Section 4(q).

DISSENTING OPINION

"The most important thing we decide
is what not to decide."
Brandeis, J.[1]

LEONEN, *J.*:

The Responsible Parenthood and Reproductive Health Act of 2012 should not be declared unconstitutional in whole or in any of its parts given the petitions filed in this case.

None of the petitions properly present an "actual case or controversy," which deserves the exercise of our awesome power of judicial review.[2] It is our duty not to rule on the abstract and speculative issues barren of actual facts.[3] These consolidated petitions, which contain bare allegations, do not provide the proper venue to decide on fundamental issues. The law in question is needed social legislation.

That we rule on these special civil actions for certiorari and prohibition — which amounts to a pre-enforcement free-wheeling facial review of the statute and the implementing rules and regulations[4] — is very bad precedent. The issues are far from justiciable. Petitioners claim in their class suits that they entirely represent a whole religion,[5] the Filipino nation[6] and, worse, all the unborn.[7] The intervenors also claim the same representation: Filipinos and Catholics.[8] Many of the petitions also sue the President of the Republic.[9]

We should apply our rules rigorously and dismiss these cases. The transcendental importance of the issues they want us to decide will be better served when we wait for the proper cases with the proper parties suffering real, actual or more imminent injury. There is no showing of an injury so great and so imminent that we cannot wait for these cases.

Claims relating to the beginning of life, the relationship of conscientious objection and the right to religion, the effects of contraception, and even the ponencia's claim that the family is put in danger if one spouse decides when there is a disagreement between them are best decided within their real contexts so that we will be able to narrowly tailor the doctrines in our decision.[10] The danger of ruling on abstract cases is that we foreclose real litigation between real parties.[11] The danger of an advisory opinion is that we are forced to substitute our own imagination of the facts that can or will happen. In an actual case, there is judicial proof of the real facts that frame our discretion.

The law clearly adopts a policy against abortion and prohibits abortifacients.[12] The definition of abortifacients is sufficiently broad to cover many moral convictions relating to the beginning of life.[13] We do not need to decide on these issue barren of actual facts that can sharpen factual and legal positions.

The court cannot make a declaration on the beginning of life. Any declaration on this issue will be fraught with contradictions. Even the Constitutional Commissioners were not in full agreement; hence, the use of the word "conception" rather than "fertilized ovum" in Article II, Section 12 of the Constitution.[14] There were glaring factual inaccuracies peddled during their discussion.[15]

Moreover, declaring the beginning of life complicates future constitutional adjudication. This will have real repercussions on, among others, acceptable medical procedures for ectopic pregnancies,[16] medical complications as a result of pregnancy resulting from sexual assaults,[17] and on assisted reproductive technologies.[18]

The petitions have failed to present clear cases when the provisions for conscientious objection would truly amount to a violation of religion. They have not distinguished the relationship of conscience and specific religious dogma.[19] They have not established religious canon that conflict with the general provision of Sections 7, 17 and 23 of the law. The comments in intervention[20] in fact raise serious questions regarding what could be acceptable Catholic doctrine on some issues of contraception and sex as only for procreation.

The majority has decided to nullify portions of the law on the basis of inchoate Catholic doctrine without considering that the law as phrased would be acceptable to other faiths, consciences and beliefs. Due to the failure of the petitioners to present actual cases, it cannot be possible to see whether their religious objection can be accommodated in the application and interpretation of the law rather than nullify the provisions wholesale.

We should tread carefully when what is involved is a religion that is not the minority. Invocations of religious freedom can be a disguised way of imposing the dominant faith on others. This is especially true in physician-patient relationships. While the physician may have her or his own religious beliefs, this should not improperly dictate on the range of services that is wanted and needed by the patient.[21] Again, there are no actual cases in specific contexts with clear religious beliefs pertaining to accepted dogma of a religion established by the petitions. The proposed declaration of unconstitutionality of portions of Section 23 is premature and inadvisable. It also amounts to a judicial amendment of the physician's oath.

The law breaks the deadlock when there is disagreement between the spouses as to whether to avail of a reproductive health technology.[22] The ponencia proposes that this violates the right to family.[23] This is one conclusion. The other is that it allows the couple to have a final decision and not continue with a perennial conflict. The other possibility here is that the man, who most often is not the one who avails of the reproductive health technology, dictates on the woman. This will then result in a violation of the requirement of fundamental equality in Article II, Section 14 of the Constitution.[24] The majority, in refusing to acknowledge the autonomy of individuals over their own bodies even in the context of marriage, has just strengthened patriarchy and increased the possibility for spousal abuse.

All the petitions are premature. At worse, the petitions attempt to impose a moral or political belief upon the others by tempting this court to use its power of judicial review.

This court is not the venue to continue the brooding and vociferous political debate that has already happened and has resulted in legislation.[25] Constitutional issues normally arise when the right and obligations become doubtful as a result of the implementation of the statute. This forum does not exist to undermine the democratically deliberated results coming from the Congress and approved by the President. Again, there is no injury to a fundamental right arising from concrete facts established with proof. Rather, the pleadings raise grave moral and philosophical issues founded on facts that have not yet happened. They are the product of speculation by the petitioners.

To steeled advocates who have come to believe that their advocacy is the one true moral truth, their repeated view may seem to them as the only factual possibility. Rabid advocacy of any view will be intolerant of the nuanced reality that proceeds from conscious and deliberate examination of facts.

This kind of advocacy should not sway us.

Our competence is to decide on legal principle only in concrete controversies. We should jealously and rigorously protect the principle of justiciability of constitutional challenges. We should preserve our role within the current constitutional order. We undermine the legitimacy of this court when we participate in rulings in the abstract because there will always be the strong possibility that we will only tend to mirror our own personal predilections. We should thus adopt a deferential judicial temperament especially for social legislation.

This law should not be declared as unconstitutional, in whole or in part, on the basis of the consolidated petitions. The status quo ante order against the Responsible Parenthood and Reproductive Health Act of 2012 or Republic Act No. 10354 (RH Law) should be lifted immediately.

There should be no further obstacle in having the entire law fully implemented.

I
No Actual Controversy, "Facial Review" is Improper

It has never been the constitutional mandate of the Supreme Court to answer all of life's questions. It is endowed instead with the solemn duty to determine when it should decline to decide with finality questions that are not legal and those that are theoretical and speculative. This court's duty includes its ability to stay its hand when the issues presented are not justiciable.

The requirement in constitutional adjudication is that we decide only when there is a "case or controversy."[26] This is clear in the second paragraph of Article VIII, Section 1 of the Constitution, thus:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle ***actual controversies*** involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

The requirement for a "case" or "controversy" locates the judiciary in the scheme of our constitutional order. It defines our role and distinguishes this institution from the other constitutional organs.

The ponencia claims that there is an actual case and controversy existing in the present controversy, and it is ripe for determination.[27] The ponente reasons that "[c]onsidering that the RH Law and its implementing rules have already taken effect, and considering that the budgetary measures to carry out the law have already been passed, it is evident that the subject petitions present a justiciable controversy. As stated earlier, when an action of the legislative branch is seriously alleged to have infringed the Constitution, it not only becomes a right, but also a duty of the Judiciary to [settle] the dispute."[28]

I disagree.

An actual case or controversy is "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice."[29] To be justiciable, the issues presented must be "'definite and concrete, touching the legal relations of parties having adverse legal interest;' a real and substantial controversy admitting of specific relief."[30] The term justiciability

refers to the dual limitation of only considering in an adversarial context the questions presented before courts, and in the process, the courts' duty to respect its co-equal branches of government's powers and prerogatives under the doctrine of separation of powers.[31]

There is a case or controversy when there is a real conflict of rights or duties ***arising from actual facts***. These facts, properly established in court through evidence or judicial notice, provide the natural limitations upon judicial interpretation of the statute. When it is claimed that a statute is inconsistent with a provision of the Constitution, the meaning of a constitutional provision will be narrowly drawn.

Without the necessary findings of facts, this court is left to speculate leaving justices to grapple within the limitations of their own life experiences. This provides too much leeway for the imposition of political standpoints or personal predilections of the majority of this court. This is not what the Constitution contemplates. Rigor in determining whether controversies brought before us are justiciable avoids the counter majoritarian difficulties attributed to the judiciary.

Without the existence and proper proof of actual facts, any review of the statute or its implementing rules will be theoretical and abstract. Courts are not structured to predict facts, acts or events that will still happen. Unlike the legislature, we do not determine policy. We read law only when we are convinced that there is enough proof of the real acts or events that raise conflicts of legal rights or duties. Unlike the executive, our participation comes in after the law has been implemented. Verily, we also do not determine how laws are to be implemented.

The existence of a law or its implementing orders or a budget for its implementation is far from the requirement that there are acts or events where concrete rights or duties arise. The existence of rules do not substitute for real facts.

Petitioners cite *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*[32] as basis for asserting that this court can take cognizance of constitutional cases without actual controversies. In that case, this court was asked to rule on the validity of the Memorandum of Agreement on the Ancestral Domain (MOA-AD) between the GRP and the Moro Islamic Liberation Front (MILF) which included provisions on the definition of the "Bangsamoro" people; the "Bangsamoro Juridical Entity" (BJE); territory of the Bangsamoro homeland; the total production sharing between the central government and the BJE relating to natural resources; and "associative relationship" with the central government.[33]

Even in that case, this court acknowledged the requirement of an actual case or controversy in exercising the power of judicial review.

> The power of judicial review is limited to actual cases or controversies. Courts decline to issue advisory opinions or to resolve hypothetical or feigned problems, or mere academic questions. The 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.[34]

This court then ruled that the petitions were ripe for adjudication because of: "[1] the failure of respondents to consult the local government units or communities affected constitutes a departure by respondents from their mandate under E.O. No. 3; [2] respondents exceeded their authority by the mere act of guaranteeing amendments to the Constitution. Any alleged violation of the Constitution by any branch of government is a proper matter for judicial review."[35] Citing *David v. Macapagal-Arroyo,* this court allowed petitioners, petitioners-in-intervention, and intervening respondents' claims of locus standi due to the paramount public interest or transcendental importance of the issues involved.

The actual case in *Province of North Cotabato* was triggered by the process invoked in the negotiation of the agreement and the claim that it exceeded the authority of the government panel in talks with the Moro Islamic Liberation Front (MILF). Executive Order No. 3 was already implemented by the acts of the negotiating panel.

The ponencia's reading of *Province of North Cotabato* is inaccurate. My esteemed colleague holds:

> x x x Citing precedents, the Court ruled that the fact of the law or act in question being not yet effective does not negate ripeness. Concrete acts under a law are not necessary to render the controversy ripe. Even a singular violation of the Constitution and/or law is enough to awaken judicial duty.
>
> In this case, the Court is of the view **that an actual case or controversy exists and that the same is ripe for judicial determination**. Considering that the RH Law and its implementing rules have already taken effect, and that the budgetary measures to carry out the law have already been passed, it is evident that the subject petitions present a justiciable controversy. As stated earlier, when an action of the legislative branch is seriously alleged to have infringed the Constitution, it not only becomes a right, but also a duty of the Judiciary to settle the dispute.[36] (Emphasis in the original)

Unlike *Province of North Cotabato*, there is yet no implementation of the RH law. The waiver of justiciability is the exception. It is not the general rule.[37] *Province of North Cotabato* involved a peculiar set of facts that required this court to exercise its power of judicial review. The respondents attempted to put the constitutional question outside the court's sphere of judicial review through the performance of acts that rendered a ripening case moot and academic.[38]

In *Garcia v. Executive Secretary,*[39] this court was faced with the issue of the constitutionality of Section 19 of Republic Act No. 8479[40] entitled "An Act Deregulating The Downstream Oil Industry And For Other Purposes." This court held that there was no justiciable controversy in the case as the issue raised went into the policy or wisdom of the law, thus:

> Stripped to its core, what petitioner Garcia raises as an issue is the propriety of immediately and fully deregulating the oil industry. Such determination essentially dwells on the soundness or wisdom of the timing and manner of the deregulation Congress wants to implement through R.A. No. 8497. Quite clearly, the issue is not for us to resolve; we cannot rule on when and to what extent deregulation should take place without passing upon the wisdom of the policy of deregulation that Congress has decided upon. To use the words of Baker v. Carr, the ruling that petitioner Garcia asks requires "an initial policy determination of a kind clearly for non-judicial discretion"; the branch of government that was given by the people the full discretionary authority to formulate the policy is the legislative department.
>
> x x x x
>
> Petitioner Garcia's thesis readily reveals the political, hence, non-justiciable, nature of his petition; the choice of undertaking full or partial deregulation is not for this Court to make.[41]

Then in *Atty. Lozano v. Speaker Nograles,*[42] this court reiterated that "[i]n our jurisdiction, the issue of ripeness [which is an aspect of the case or controversy requirement] is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it x x x [or when] an action has already been accomplished or performed by a branch of government x x x."[43]

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[44] this court declined to rule on the constitutionality of Republic Act No. 9372 or "An Act to Secure the State and Protect Our People from Terrorism," otherwise known as the Human Security Act of 2007. Again, with respect to the requirement of the existence of an actual case, this court held:

> As early as Angara v. Electoral Commission, the Court ruled that the power of judicial review is limited to actual cases or controversies to be exercised after full opportunity of argument by the parties. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.
>
> 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.
>
> Information Technology Foundation of the Philippines v. COMELEC cannot be more emphatic:
>
> "[C]ourts 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 hand; that is, it must concern a real 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."
>
> Thus, a petition to declare unconstitutional a law converting the Municipality of Makati into a Highly Urbanized City was held to be premature as it was tacked on uncertain, contingent events. Similarly, a petition that fails to allege that an application for a license to operate a radio or television station has been denied or granted by the authorities does not present a justiciable controversy, and merely wheedles the Court to rule on a hypothetical problem.
>
> The Court dismissed the petition in Philippine Press Institute v. Commission on Elections for failure to cite any specific affirmative action of the Commission on Elections to implement the assailed resolution. It refused, in Abbas v. Commission on Elections, to rule on the religious freedom claim of the therein petitioners based merely on a perceived potential conflict between the provisions of the Muslim Code and those of the national law, there being no actual controversy between real litigants.
>
> The list of cases denying claims resting on purely hypothetical or anticipatory grounds goes on ad infinitum.

> The Court is not unaware that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues.[45] (Emphasis supplied)

Recently, this court in *Corales v. Republic*[46] passed upon the ripeness or prematurity of a petition for prohibition assailing the Audit Observation Memorandum (AOM) issued by the Provincial State Auditor of Laguna against petitioner as Mayor. We again held that:

> x x x this Court can hardly see any actual case or controversy to warrant the exercise of its power of judicial review. Settled is the rule that for the courts to exercise the power of judicial review, the following must be extant: (1) there must be an actual case calling for the exercise of judicial power; (2) the question must be ripe for adjudication; and (3) the person challenging must have the "standing." 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 on the basis of existing law and jurisprudence. Closely related thereto is that the question must be ripe for adjudication. A question is considered ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.
>
> x x x x
>
> The requisites of actual case and ripeness are absent in the present case. To repeat, the AOM issued by Andal merely requested petitioner Corales to comment/reply thereto. Truly, the AOM already contained a recommendation to issue a Notice of Disallowance; however, no Notice of Disallowance was yet issued. More so, there was no evidence to show that Andal had already enforced against petitioner Corales the contents of the AOM. x x x. The action taken by the petitioners to assail the AOM was, indeed, premature and based entirely on surmises, conjectures and speculations that petitioner Corales would eventually be compelled to reimburse petitioner Dr. Angeles' salaries, should the audit investigation confirm the irregularity of such disbursements.[47]

The doctrinal character of the requirement of an actual case may also be inferred from the tenor of the reservations of several members of this court in *Province of North Cotabato.*[48]

Then Justice Chico-Nazario, in voting to grant the motion to dismiss of the Office of Solicitor General and to dismiss the petitions, pointed out that:

> The Court should not feel constrained to rule on the Petitions at bar just because of the great public interest these cases have generated. We are, after all, a court of law, and not of public opinion. **The power of judicial review of this Court is for settling real and existent dispute, it is not for allaying fears or addressing public clamor. In acting on supposed abuses by other branches of government, the Court must be careful that it is not committing abuse itself by ignoring the fundamental principles of constitutional law.**
>
> x x x. The Court must accord a co-equal branch of the government nothing less than trust and the presumption of good faith.
>
> x x x x
>
> Upon the Executive Department falls the indisputably difficult responsibility of diffusing the highly volatile situation in Mindanao resulting from the continued clashes between the Philippine military and Muslim rebel groups. In negotiating for peace, the Executive Department should be given enough leeway and should not be prevented from offering solutions which may be beyond what the present Constitution allows, as long as such solutions are agreed upon subject to the amendment of the Constitution by completely legal means.[49] (Emphasis supplied)

Justice Velasco in that case emphasized the need to be vigilant in protecting the doctrine of separation of powers enshrined in our Constitution, hence:

> Over and above the foregoing considerations, however, is the matter of separation of powers which would likely be disturbed should the Court meander into alien territory of the executive and dictate how the final shape of the peace agreement with the MILF should look like. The system of separation of powers contemplates the division of the functions of government into its three (3) branches x x x. Consequent to the actual delineation of power, each branch of government is entitled to be left alone to discharge its duties as it sees fit. Being one such branch, the judiciary, as Justice Laurel asserted in Planas v. Gil, "will neither direct nor restrain executive [or legislative action]." Expressed in

> another perspective, the system of separated powers is designed to restrain one branch from inappropriate interference in the business, or intruding upon the central prerogatives, of another branch; it is a blend of courtesy and caution, "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." x x x. The sheer absurdity of the situation where the hands of executive officials, in their quest for a lasting and honorable peace, are sought to be tied lest they agree to something irreconcilable with the Constitution, should not be lost on the Court.
>
> Under our constitutional set up, there cannot be any serious dispute that the maintenance of the peace, insuring domestic tranquility and the suppression of violence are the domain and responsibility of the executive. Now then, if it be important to restrict the great departments of government to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that one branch should be left completely independent of the others, independent not in the sense that the three shall not cooperate in the common end of carrying into effect the purposes of the constitution, but in the sense that the acts of each shall never be controlled by or subjected to the influence of either of the branches.[50]

Eloquently, Justice Brion in his dissenting opinion in *Province of North Cotabato* asserted:

> x x x. Where policy is involved, we are bound by our constitutional duties to leave the question for determination by those duly designated by the Constitution—the Executive, Congress, or the people in their sovereign capacity.
>
> In the present case, the peace and order problems of Mindanao are essentially matters for the Executive to address, with possible participation from Congress and the sovereign people as higher levels of policy action arise. Its search for solutions, in the course of several presidencies, has led the Executive to the peace settlement process. As has been pointed out repetitively in the pleadings and the oral arguments, the latest move in the Executive's quest for peace—the MOA-AD—would have not been a good deal for the country if it had materialized. This Court, however, seasonably intervened and aborted the planned signing of the agreement. The Executive, for its part, found it wise and appropriate to fully heed the signals from our initial action and from the public outcry the MOA-AD generated; it backtracked at the earliest opportunity in a manner consistent with its efforts to avoid or minimize bloodshed while preserving the peace process. At the moment, the peace and order problem is still with the Executive where the matter should be; the initiative still lies with that branch of government. The Court's role, under the constitutional scheme that we are sworn to uphold, is to allow the initiative to be where the Constitution says it should be. ***We cannot and should not interfere unless our action is unavoidably necessary because the Executive is acting beyond what is allowable, or because it has failed to act in the way it should act, under the Constitution and our laws.***
>
> x x x x
>
> ***Rather than complicate the issues further with judicial pronouncements that may have unforeseen or unforeseeable effects on the present fighting and on the solutions already being applied, this Court should exercise restraint as the fears immediately generated by a signed and concluded MOA-AD have been addressed and essentially laid to rest. Thus, rather than pro-actively act on areas that now are more executive than judicial, we should act with calibrated restraint along the lines dictated by the constitutional delineation of powers***. Doing so cannot be equated to the failure of this Court to act as its judicial duty requires; as I mentioned earlier, we have judicially addressed the concerns posed with positive effects and we shall not hesitate to judicially act in the future, as may be necessary, to ensure that the integrity of our constitutional and statutory rules and standards are not compromised. If we exercise restraint at all, it is because the best interests of the nation and our need to show national solidarity at this point so require, in order that the branch of government in the best position to act can proceed to act.
>
> x x x x
>
> x x x. We can effectively move as we have shown in this MOA-AD affair, ***but let this move be at the proper time and while we ourselves observe the limitations the Constitution commonly impose on all branches of government in delineating their respective roles***.[51] (Emphasis supplied)

It is true that the present Constitution grants this court with the exercise of judicial review when the case involves the determination of "grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[52] This new feature of the 1987 Constitution affects our political question doctrine. It does not do away with the requirement of an actual case. The requirement of an actual case is fundamental to the nature of the judiciary.

No less than Justice Vicente V. Mendoza implied that the rigorous requirement of an actual case or controversy is determinative of the nature of the judiciary. Thus:

> [i]nsistence on the existence of a case or controversy before the judiciary undertakes a review of legislation gives it

> the opportunity, denied to the legislature, of seeing the actual operation of the statute as it is applied to actual facts and thus enables to it to reach sounder judgment.[53]

In the recent case of *Belgica, et al. v. Executive Secretary,* we pointed out:[54]

> [b]asic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.
>
> The requirement of an "actual case," thus, means that the case before this Court "involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic based on extra-legal or other similar considerations not cognizable by a court of justice." Furthermore, "the controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests." Thus, the adverse position of the parties must be sufficient enough for the case to be pleaded and for this Court to be able to provide the parties the proper relief/s prayed for.
>
> The requirement of an 'actual case' will ensure that this Court will not issue advisory opinions. It prevents us from using the immense power of judicial review absent a party that can sufficiently argue from a standpoint with real and substantial interests.[55]

Regretfully, the ponencia takes inconsistent positions as to whether the petitions do allege actual cases. On the issue of the violation of the right to health under Section 9 of the law,[56] he correctly held that the constitutional challenge is premature:

> x x x **not a single contraceptive has yet been submitted to the FDA pursuant [to the] RH Law**. It [behooves] the Court to await its determination which drugs or devices are declared by the FDA as safe, it being the agency tasked to ensure that food and medicines available to the public are safe for public consumption. x x x Indeed, the various kinds of contraceptives must first be measured up to the constitutional yardstick x x x to be determined as the case presents itself.[57] (Emphasis in the original)

Moreover, the ponencia also correctly held that a discussion on the constitutionality of Section 14 of the law, pertaining to the teaching of Age- and Development-Appropriate Reproductive Health Education,[58] is not yet ripe for determination:

> x x x any attack on the validity of Section 14 of the RH Law is ***premature***, as the Department of Education, Culture and Sports have yet to formulate any curriculum on age-appropriate reproductive health education. At this point, one can only speculate [on the] contents, manner and medium of instruction that would be used to educate the adolescents and whether [these] would contradict the religious beliefs of petitioners, and validate their apprehensions. x x x.
>
> x x x x
>
> While the Court notes the possibility that educators could raise their objection to their participation in the reproductive health education program provided under Section 14 of the RH Law on the ground that the same violates their religious beliefs, the Court reserves its judgment should an actual case be filed before it.[59] (Emphasis in the original)

Unfortunately, the ponencia failed to discuss how several provisions of the RH Law became vulnerable to a facial attack, whereas other provisions must await an actual case or controversy to pass upon its constitutionality. The ponencia explained that the:

> x x x foregoing petitions have seriously alleged that the constitutional human right to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to

take cognizance of these kindred petitions and determine if the RH Law can indeed pass constitutional scrutiny.[60]

I restate, for purposes of emphasis, parts of my disquisition on facial challenges in my dissenting and concurring opinion in Disini v. Secretary of Justice.[61] After all, the challenges to this present law and the Cybercrime Prevention Act of 2012 are the public's reaction to the increasingly liberal but disturbing treatment that we have given on the issue of rigorous analysis for the justiciability of controversies brought before us.

The invalidation of the statute is either "on its face" or "as applied." The only instance when a facial review of the law is not only allowed but also essential is ***"when the provisions in question are so broad that there is a clear and imminent threat that actually operates or it can be used as a prior restraint of speech."***[62]

In *Cruz v. Secretary of Environment and Natural Resources,*[63] Justice Vicente V. Mendoza explained the difference of an "as applied" challenge from an "on its face" challenge:

The only instance where a facial challenge to a statute is allowed is when it operates in the area of freedom of expression. In such instance, the overbreadth doctrine permits a party to challenge the validity of a statute even though as applied to him it is not unconstitutional but it might be if applied to others not before the Court whose activities are constitutionally protected. **Invalidation of the statute "on its face" rather than "as applied" is permitted in the interest of preventing a "chilling" effect on freedom of expression**. But in other cases, even if it is found that a provision of a statute is unconstitutional, courts will decree only partial invalidity unless the invalid portion is so far inseparable from the rest of the statute that a declaration of partial invalidity is not possible.[64] (Emphasis supplied)

Subsequently, in *Estrada v. Sandiganbayan,*[65] Justice Mendoza culled a more extensive rule regarding facial or "on its face" challenges, thus:

> **[a] facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.**" The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
>
> This rationale does not apply to penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.
>
> **The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment.**" In *Broadrick v. Oklahoma*, the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative Act is … the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." x x x.
>
> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." x x x.[66] (Emphasis supplied)

Similarly, this court in *Prof. David v. Pres. Macapagal-Arroyo*[67] laid down guides when a facial challenge may be properly brought before this court, thus:

> *First and foremost,* the overbreadth doctrine is an analytical tool developed for testing "on their faces" statutes in **free speech cases**, also known under the American Law as First Amendment cases.

x x x x

Thus, claims of facial overbreadth are entertained in cases involving statutes which, **by their terms**, seek to regulate only **"spoken words"** and again, that **"overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct."** Here, the incontrovertible fact remains that PP 1017 pertains to a spectrum of **conduct,** not free speech, which is manifestly subject to state regulation.

Second, facial invalidation of laws is considered as **"manifestly strong medicine,"** to be used **"sparingly and only as a last resort,"** and is **"generally disfavored;"** The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, i.e., **in other situations not before the Court**. A writer and scholar in Constitutional Law explains further:

> **The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties**; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.

In other words, a facial challenge using the overbreadth doctrine will require the Court to examine PP 1017 and pinpoint its flaws and defects, not on the basis of its actual operation to petitioners, but on the assumption or prediction that its very existence may cause **others not before the Court** to refrain from constitutionally protected speech or expression. In *Younger v. Harris*, it was held that:

> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the **relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes,**...ordinarily results in a kind of case that is **wholly unsatisfactory** for deciding constitutional questions, whichever way they might be decided.

And *third,* a facial challenge on the ground of overbreadth is the most difficult challenge to mount successfully, since the challenger must establish that **there can be no instance when the assailed law may be valid**. Here, petitioners did not even attempt to show whether this situation exists.[68] (Emphasis in the original)

A similar view was adopted by this court in *Romualdez v. Hon. Sandiganbayan*[69] and *Spouses Romualdez v. Commission on Elections*.[70] Unfortunately, in resolving the motion for reconsideration in *Spouses Romualdez v. Commission on Elections*,[71] this court seemed to have expanded the scope of the application of facial challenges. Hence:

> x x x. The rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged. Under no case may ordinary penal statutes be subjected to a facial challenge.[72]

However, the basic rule was again restated in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*:[73]

> Distinguished from an **as-applied** challenge which considers only extant facts affecting real litigants, a **facial** invalidation is an examination of the **entire law**, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.

Justice Mendoza accurately phrased the subtitle in his concurring opinion that the vagueness and overbreadth doctrines, *as grounds for a facial challenge*, are not applicable to **penal** laws. **A litigant cannot thus successfully mount a facial challenge against a criminal statute on either vagueness or overbreadth grounds.**

The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an "*in terrorem* effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.

The Court reiterated that there are "critical limitations by which a criminal statute may be challenged" and "underscored that an 'on-its-face' invalidation of penal statutes x x x may not be allowed."

> [T]he rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged. **Under no case may ordinary penal statutes be subjected to a facial challenge**. The rationale is obvious. If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible. A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. As I have said in my opposition to the allowance of a facial challenge to attack penal statutes, such a test will impair the State's ability to deal with crime. If warranted, there would be nothing that can hinder an accused from defeating the State's power to prosecute on a mere showing that, as applied to third parties, the penal statute is vague or overbroad, notwithstanding that the law is clear as applied to him.

It is settled, on the other hand, that **the application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases.**

By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.

x x x x

In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment, and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words. In *Virginia v. Hicks,* it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression."[74] (Emphasis and underscoring in the original)

The prevailing doctrine today is that:

> a facial challenge only applies to cases where the free speech and its cognates are asserted before the court. While as a general rule penal statutes cannot be subjected to facial attacks, a provision in a statute can be struck down as unconstitutional when there is a clear showing that there is an imminent possibility that its broad language will allow ordinary law enforcement to cause prior restraints of speech and the value of that speech is such that its absence will be socially irreparable.[75]

Broken down into its elements, a facial review should only be allowed when:

> First, the ground for the challenge of the provision in the statute is that it violates freedom of expression or any of its cognates;
>
> Second, the language in the statute is impermissibly vague;
>
> Third, the vagueness in the text of the statute in question allows for an interpretation that will allow prior restraints;

> Fourth, the "chilling effect" is not simply because the provision is found in a penal statute but because there can be a clear showing that there are special circumstances which show the imminence that the provision will be invoked by law enforcers;
>
> Fifth, the application of the provision in question will entail prior restraints; and
>
> Sixth, the value of the speech that will be restrained is such that its absence will be socially irreparable. This will necessarily mean balancing between the state interests protected by the regulation and the value of the speech excluded from society.[76]

Facial challenges can only be raised on the basis of overbreadth and not on vagueness. *Southern Hemisphere* demonstrated how vagueness relates to violations of due process rights, whereas facial challenges are raised on the basis of overbreadth and limited to the realm of freedom of expression.

None of these petitions justify a facial review of this social legislation. The free exercise of one's religion may be a cognate of the freedom of expression. However, the petitions have not properly alleged the religion, the religious dogma, the actual application of the religious dogma where a repugnancy can be shown. They have also failed to demonstrate that the violation of the amorphous religious dogmas that they imagine should result in the invalidation of statutory text rather than simply an adjustment in its interpretation and in its application.

II
No *Locus Standi*

Besides, the consolidated cases are improper class suits that should be dismissed outright.

A class suit is allowed under the rules[77] if those who instituted the action are found to be sufficiently numerous and representative of the interests of all those they seek to represent. They must be so numerous that it would be impractical to bring them all to court or join them as parties. Lastly, a common interest in the controversy raised must be clearly established.[78]

These requirements afford protection for all those represented in the class suit considering that this court's ruling will be binding on all of them. We should be especially cautious when the class represented by a few in an alleged class suit is the "entire Filipino Nation" or all the adherents of a particular religion. This court must be convinced that the interest is so common that there can be no difference in the positions and points of view of all that belong to that class. Anything less than this standard will be an implied acceptance that in this important adjudication of alleged constitutional rights, the views of a few can be imposed on the many.

In the 1908 case of *Ibañes v. Roman Catholic Church,*[79] 13 plaintiffs filed the complaint for themselves and on behalf of the other inhabitants of the town of Ternate against the Roman Catholic Church for the proprietorship of an image of the Holy Child.[80] This court held that the action could not be maintained.

> It sufficiently appears from the record in this case that it is a controversy between the Roman Catholic Church on one side and the Independent Filipino Church on the other. That it is the purpose of the plaintiffs, if they secure possession of the image, to place it in the chapel of the Independent Church is also very clear. ***What number of the inhabitants of the town (2,460 according to the census) are members of the Roman Catholic Church and what part are members of the Independent Filipino Church does not appear. But it is very apparent that many of the inhabitants are opposed to the transfer of the image from the Roman Catholic Church. Under the circumstances, the thirteen plaintiffs do not fairly represent all of the inhabitants of the town. Their interest and the interests of some of the others are diametrically opposed. For this reason this action can not be maintained.***[81] (Emphasis supplied)

In the 1974 case of *Mathay v. Consolidated Bank and Trust Co.,*[82] this court affirmed the dismissal of a complaint captioned as a class suit for failure to comply with the requisite that the parties who filed the class suit must be sufficiently numerous and representative:

> The complaint in the instant case explicitly declared that the plaintiffs-appellants instituted the "present class suit under Section 12, Rule 3, of the Rules of Court in behalf of CMI subscribing stockholders" but did not state the number of said CMI subscribing stockholders so that the trial court could not infer, much less make sure as explicitly required by the statutory provision, that the parties actually before it were sufficiently numerous and representative in order that all interests concerned might be fully protected, and that it was impracticable to bring such a large number of parties before the court.
>
> x x x x

> Appellants, furthermore, insisted that insufficiency of number in a class suit was not a ground for dismissal of one action. ***This Court has, however, said that where it appeared that no sufficient representative parties had been joined, the dismissal by the trial court of the action, despite the contention by plaintiffs that it was a class suit, was correct***.[83] (Emphasis supplied)

In *Re: Request of the Heirs of the Passengers of Doña Paz,*[84] a class suit was filed by 27 named plaintiffs on behalf and in representation of "the approximately 4,000 persons x x x (who also) are all close relatives and legal heirs of the passengers of the Doña Paz."[85] This court distinguished class suits[86] from permissive joinder of parties:[87]

> x x x. What makes the situation a proper case for a class suit is the circumstance that there is only one right or cause of action pertaining or belonging in common to many persons, not separately or severally to distinct individuals.
>
> x x x x
>
> The other factor that serves to distinguish the rule on class suits from that of permissive joinder of parties is, of course, the numerousness of parties involved in the former. The rule is that for a class suit to be allowed, it is needful inter alia that the parties be so numerous that it would be impracticable to bring them all before the court.[88]

Finding that the case was improperly brought as a class suit, this court concluded that "it follows that the action may not be maintained by a representative few in behalf of all the others."[89] Consequently, this court denied the authority to litigate in the form of a class suit.[90]

This ruling was again emphasized in *Bulig-Bulig Kita Kamag-anak Association v. Sulpicio Lines, Inc.,*[91] making the ratio decidendi in *Re: Request of the Heirs of the Passengers of Doña Paz binding precedent.*[92] These cases have been cited in a more recent jurisprudence in its discussion on the need to sufficiently represent all interests for a class suit to prosper.[93]

MVRS Publications, Inc. et al. v. Islamic Da'wah Council of the Philippines, Inc. et al.[94] emphasized how adequacy of representation in a class suit is important in fully protecting the interests of those concerned:

> In any case, respondents' lack of cause of action cannot be cured by the filing of a class suit. As correctly pointed out by Mr. Justice Jose C. Vitug during the deliberations, "an element of a class suit is the adequacy of representation. In determining the question of fair and adequate representation of members of a class, the court must consider (a) whether the interest of the named party is coextensive with the interest of the other members of the class; (b) the proportion of those made parties as it so bears to the total membership of the class; and, (c) any other factor bearing on the ability of the named party to speak for the rest of the class.
>
> The rules require that courts must make sure that the persons intervening should be sufficiently numerous to fully protect the interests of all concerned. In the present controversy, Islamic Da'wah Council of the Philippines, Inc., seeks in effect to assert the interests not only of the Muslims in the Philippines but of the whole Muslim world as well. Private respondents obviously lack the sufficiency of numbers to represent such a global group; neither have they been able to demonstrate the identity of their interests with those they seek to represent. Unless it can be shown that there can be a safe guaranty that those absent will be adequately represented by those present, a class suit, given its magnitude in this instance, would be unavailing.[95]

Class suits require that there is a possibility that those represented can affirm that their interests are properly raised in a class suit. The general rule must be that they be real and existing. In constitutional adjudication, this court must approach class suits with caution; otherwise, future generations or an amorphous class will be bound by a ruling which they did not participate in.

Not all these elements for a proper class suit are present in the petitions filed in these cases.

Petitioners James M. Imbong and Lovely-Ann C. Imbong, for themselves and in behalf of their minor children, Lucia Carlos Imbong and Bernadette Carlos Imbong, and Magnificat Child Development Center, Inc.[96] filed their petition "as parents and as a class suit in representation of other parents and individuals similarly situated."[97] They alleged that they are "Catholics who have deeply-held religious beliefs upon which Faith their conscience is rooted against complying with the mandates of the Act."[98]

Four persons and a juridical entity cannot be considered as sufficiently numerous and representative of the interests of "all other parents and individuals similarly situated."

Petitioners Alliance for the Family Foundation, Inc. (ALFI), represented by its President, Maria Concepcion S. Noche, Spouses Reynaldo S. Luistro & Rosie B. Luistro, et al.[99] invoked *Oposa v. Factoran, Jr.* in filing their petition "on behalf of all generations of Filipinos yet unborn, who are in danger of being deprived of the right to life by R.A. No. 10354."[100]

The required common interest in the controversy can neither be determined nor proven in this case if those to be represented are yet to be born.

It is true that in *Oposa v. Factoran, Jr.,*[101] intergenerational suits were introduced in our jurisdiction. However, this case must not be abused out of its context. *Oposa* is a novel case involving an environmental class suit. This environmental case involved minor petitioners who filed a complaint for the cancellation of all existing timber license agreements in the country. They were allowed to sue on behalf of future generations on the ground of "intergenerational responsibility," in relation to the constitutional right to a balanced and healthful ecology.[102] The state of our ecology will certainly affect future generations regardless of ideology, philosophy or standpoints.

On the other hand, those who will only be born in the future may have different views regarding the various policy approaches on responsible parenthood and reproductive health. Hence, the commonality of the interest that will justify the presumption that the legal positions will be the same is not present.

In its petition, Task Force for Family and Life Visayas, Inc.[103] alleged that it is "an association of men and women who have committed themselves to the protection of family and life, sanctity of marriage x x x."[104] Its members are "Roman Catholics by faith" and are "spread throughout the Visayan region."[105] The petitioners collectively seek relief "from the impending threat against their children, their respective families and the entire Filipino nation, their religious freedom and other constitutional rights they foresee and make known in this petition."[106]

Petitioners, by no stretch of the imagination, cannot be representative of the interests of "the entire Filipino nation." Not all Filipinos are Roman Catholics. Not all Filipinos are from the Visayas. Certainly not all Filipinos have a common interest that will lead to a common point of view on the constitutionality of the various provisions of the RH law.

Serve Life Cagayan de Oro City, Inc., represented by Dr. Nestor B. Lumicao, M.D. as President and in his personal capacity, Rosevale Foundation, Inc., represented by Dr. Rodrigo M. Alenton, M.D. as member of the school board and in his personal capacity, Rosemarie R. Alenton, Imelda G. Ibarra, CPA, Lovenia P. Naces, Ph.D., Anthony G. Nagac, Earl Anthony C. Gambe, and Marlon I. Yap also filed a petition consolidated with these cases.[107]

The individual petitioners alleged they are medical practitioners, members of the bar, educators, and various professionals who filed this petition "as parents and as a class suit in representation of other parents and individuals similarly situated."[108] They are "devout and practicing Catholics whose religious beliefs find the mandatory provisions of the RH law obnoxious and unconscionable."[109]

The basis for representing Catholics because their religious beliefs find the RH law obnoxious and unconscionable is not shared by all Catholics. Again, the class is improperly defined and could not withstand judicial scrutiny. Their views may not be representative of the entire class they seek to represent.

Spouses Francisco S. Tatad and Maria Fenny C. Tatad and Alan F. Paguia alleged that they are representing, themselves, their posterity, and the rest of Filipino posterity.[110] They instituted their action "in their capacity as concerned citizens, taxpayers, parents, grandparents, biological ancestors of all their descendants, born and unborn, conceived or not yet conceived, up to their remotest generation in the future within the context of Filipino posterity under the 1987 Constitution."[111]

Three individual petitioners cannot be considered as sufficiently numerous and representative of the interests "of the rest of Filipino posterity." There is no showing that future Filipinos will accept their point of view. No one can be certain of the interest of Filipinos in the future. No one can be certain that even their descendants will agree with their position. Consequently, a common interest on the controversy with future Filipinos cannot be established.

In fact, petitioners Couples for Christ Foundation, Inc., et al.[112] confirmed the existence of divergent opinions on the RH law among Filipinos when it stated that "the Filipino people, of whom majority are Catholics, have a strong interest in the final resolution of the issues on reproductive health, which has divided the nation for years." [113]

Pro-Life Philippines Foundation, Inc., represented by Lorna Melegrito as Executive Director and in her personal capacity, Joselyn B. Basilio, Robert Z. Cortes, Ariel A. Crisostomo, Jeremy I. Gatdula, Cristina A. Montes, Raul Antonio A. Nidot, Winston Conrad B. Padojinog, and Rufino L. Policarpio III also filed a petition.[114]

The individual petitioners instituted this action "as parents, and as a class suit in representation of other parents and individuals similarly situated."[115] They alleged that the RH law is "oppressive, unjust, confiscatory and discriminatory specifically against

herein petitioners – as parents, professionals, and faithful of the Catholic Church."[116]

Again, there is no showing that these individual petitioners are sufficiently numerous and representative of the interests of those they seek to represent.

The rationale for the dismissal of actions in these types of class suits is far from merely procedural. Since petitioners claim representation, the argument that they bring as well as the finality of the judgment that will be rendered will bind their principals. An improperly brought class suit, therefore, will clearly violate the due process rights of all those in the class. In these cases, certainly the entire Filipino nation, all the descendants of petitioners, all Catholics, and all the unborn will be bound even though they would have agreed with respondents or the intervenors.

Being improperly brought as class suits, these petitions should be dismissed.

Besides this infirmity, some of the petitions included the Office of the President as party respondent.[117] Also on this basis, these petitions should be dismissed.

A sitting president cannot be sued.[118] This immunity exists during the President's incumbency only. The purpose is to preserve the dignity of the office that is necessary for its operations as well as to prevent any disruption in the conduct of official duties and functions.[119] Without this immunity, a proliferation of suits would derail the focus of the office from addressing the greater needs of the country to attending each and every case filed against the sitting President, including the petty and harassment suits.

The doctrine of presidential immunity is not a surrender of the right to demand accountability from those who hold public office such as the President. The Constitution enumerates the grounds when a President may be impeached.[120] This immunity is also no longer available to a non-sitting President. After the end of his or her tenure, he or she can be made criminally and civilly liable in the proper case.[121]

III
The Right to Life

Petitioners raise the issue of right to life under Article III, Section 1 of the Constitution in relation to the policy of equal protection of the life of the mother and of the unborn under Article II, Section 12. In this context, the right to life is viewed as the right to a corporeal existence.

The constitutional right to life has many dimensions. Apart from the protection against harm to one's corporeal existence, it can also mean the "right to be left alone". The right to life also congeals the autonomy of an individual to provide meaning to his or her life. In a sense, it allows him or her sufficient space to determine quality of life. A law that mandates informed choice and proper access for reproductive health technologies should not be presumed to be a threat to the right to life. It is an affirmative guarantee to assure the protection of human rights.

The threat to corporeal existence

The policy taken by the law against abortion is clear. In the fifth paragraph of Section 2,[122] the law provides:

> The State likewise guarantees universal access to medically safe, ***non-abortifac[i]ent***, effective, legal, affordable, and quality reproductive health care services, methods, devices, supplies which do not prevent the implantation of a fertilized ovum as determined by the Food and Drug Administration (FDA) and relevant information and education thereon according to the priority needs of women, children and other underprivileged sectors x x x. (Emphasis supplied)

Section 3,[123] paragraph (d) likewise emphasizes the following as a guiding principle of implementation:

> (d) The provision of ethical and medically safe, legal, accessible, affordable, ***non-abortifac[i]ent,*** effective and quality reproductive health care services and supplies is essential in the promotion of people's right to health, especially those of women, the poor and the marginalized, and shall be incorporated as a component of basic health care[.] (Emphasis supplied)

Then, subparagraph (j) of the same section in this law states:

> (j) ***While this Act recognizes that abortion is illegal and punishable by law,*** the government shall ensure that all women needing care for post-abortive complications and all other complications from pregnancy, labor and delivery and related issues shall be treated and counseled in a humane, nonjudgmental and compassionate manner in

accordance with law and medical ethics[.] (Emphasis supplied)

Section 9[124] of the law provides:

> Sec. 9. The Philippine National Drug Formulary System and Family Planning Supplies. – The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectibles and other safe, legal, ***non-abortifac[i]ent*** and effective family planning products and supplies. x x x. (Emphasis supplied)

Section 4, paragraph (a) of Republic Act No. 10354 defines abortifacient as:

> (a) Abortifacient refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA.

This should have been sufficient to address the contention by petitioners that the law violates the right to life and that right to life means the right to a corporeal existence.

The ponencia found that the law was "consistent with the Constitution"[125] because it "prohibits any drug or device that induces abortion" [126] and because it "prohibits any drug or device [that prevents] the fertilized ovum to reach and be implanted in the mother's womb."[127]

When life begins, not an issue.

However, the court cannot make a declaration of when life begins. Such declaration is not necessary and is a dictum that will unduly confuse future issues.

First, there is, as yet, no actual controversy that can support our deliberation on this specific issue.

Second, the court cannot rely on the discussion of a few commissioners during the drafting of the constitution by the Constitutional Commission.

In *Civil Liberties Union v. Executive Secretary*,[128] this court noted:

> A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.[129]

However, in the same case, this court also said:[130]

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. **Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers's understanding thereof**. [131] (Emphasis supplied)

The meaning of constitutional provisions should be determined from a contemporary reading of the text in relation to the other provisions of the entire document. We must assume that the authors intended the words to be read by generations who will have to live with the consequences of the provisions. The authors were not only the members of the Constitutional Commission but all those who participated in its ratification. Definitely, the ideas and opinions exchanged by a few of its

commissioners should not be presumed to be the opinions of all of them. The result of the deliberations of the Commission resulted in a specific text, and it is that specific text—and only that text—which we must read and construe.

The preamble establishes that the "sovereign Filipino people" continue to "ordain and promulgate" the Constitution. The principle that "sovereignty resides in the people and all government authority emanates from them"[132] is not hollow. Sovereign authority cannot be undermined by the ideas of a few Constitutional Commissioners participating in a forum in 1986 as against the realities that our people have to face in the present.

There is another, more fundamental, reason why reliance on the discussion of the Constitutional Commissioners should not be accepted as basis for determining the spirit behind constitutional provisions. The Constitutional Commissioners were not infallible. Their statements of fact or status or their inferences from such beliefs may be wrong. This is glaringly true during their discussions of their reasons for supporting the formulation of Article II, Section 12 of the Constitution.[133]

It cannot be contended that the exact moment when life begins was a settled matter for the Constitutional Commissioners. This is just one reading of their discussions.

For Commissioner Bernas, the reason for extending right to life to a fertilized ovum[134] was to "prevent the Supreme Court from arriving at a x x x conclusion" similar to *Roe v. Wade*.[135] In the process, he explained his ideas on the beginning of life:

> FR. BERNAS: x x x The intent of this addition is to preclude the Supreme Court from following the United States doctrine which does not begin to weigh the life of the unborn against that of the mother until the fetus has reached a viable stage of development. In American doctrine, during the first six months of pregnancy, the only requirement for allowing abortion is that it will not be harmful to the mother. It is only after the sixth month that the life of the fetus begins to be weighed against the life of the mother.
>
> **The innovation does not say that from the first moment the sperm and the egg shake hands, human life is already present**, much less does it say that at that moment, a soul is infused; nor does the innovation say that the right to life of the fertilized ovum must prevail over the life of the mother all the time. All that the innovation says is that from the moment of fertilization, the ovum should be treated as life whose worth must be weighed against the life of the woman, not necessarily saying that they are of equal worth.[136]
>
> x x x. The Argument in Roe v. Wade is that the important thing is the privacy of the mother's womb. If she wants to get rid of that fetus anytime within the first six months, it is allowed provided it can be done safely even if there is no medical reason for it. That is the only thing contemplated in this.[137]

However, despite Fr. Bernas' statement on the proposed inclusion of "[t]he right to life extends to the fertilized ovum" in Section 1 of the Bill of Rights, Bishop Bacani stated that human life already existed at the time of conception:

> BISHOP BACANI: The formulation reached by the Committee was "fertilized ovum," to precisely define what we meant. And it will be brought forward in another committee report that the right to life begins with conception. That is meant to explain what is understood on the committee report by the word "conception." The Gentleman was asking whether this is a human person. That is not the assertion yet of this section. **But what we do assert is this, that this is human life already.** If I may be allowed to read the results of the report by Fr. Robert Henley, who is also a Jesuit like Fr. Bernas, it seems they are in all camps. Let me just read this into the record. He says:
>
> Specializing as it does in fetal physiology, Georgetown University, probably more than almost any other university, is aware of the biological facts regarding the beginnings of human life.
>
> From the moment of conception a new biological entity exists. The entity cannot be considered as physically identical with the mother's body. To consider the matter broadly, there is no essential difference between an ovum fertilized within the body and an ovum fertilized outside the parent's body or rejected in an egg or emerging undeveloped, as in marsupials, in an external pouch. To destroy this entity is to destroy an existing life. **Since this life entity is clearly within the development of the human species, there is obviously nothing added on a human being**. Its destruction is the destruction of human life. Murder cannot be justified by a legal fiction. [138]

Further in the deliberations on this issue, Ms. Felicitas Aquino* propounded some concerns:

> MS. AQUINO: Madam President, before the issue on the right to life is lost in the interdebate on the vexing question of the U.S. bases, I am intervening to settle some matters about the matter of the right to life.
>
> I am very much alarmed by the absolutist claim to morality in the defense of human life, the defense that was raised

> by Commissioner Villegas. There is presently a raging debate on the philo-ethical considerations of the origin or the beginnings of human life that at this moment, I do not think we are in any position to preempt the debate and come up with a premature conclusion on the matter. There are still pressing questions in my mind, such as: Is the biological existence of a potentiality for life synonymous with human personality? Is viability synonymous with life? There are at least a dozen theories that attempt to address themselves to this kind of question. For example, we are aware of the Thomistic concept of hylomorphism which posits the complementarity of matter and form. The theory demands that before human life is assumed, the material body demands a certain measure of organization and form that makes it capable of receiving a soul. It operates on the premise that individuality is the basic premise and the fundamental criterion for human life and human personality and individuality requires consciousness and self-reflection.
>
> There is another theory which states that human life begins two to three weeks after conception; that is after the possibility on the process of twinning the zygote or the recombination of the zygote is finally ruled out. These are questions that need to be addressed in our Civil Code. For example, in the context of this discussion, Articles 40 and 41 are settled that personality is determined by birth, and that for all purposes favorable to it, a conceived baby is considered born but subject to the conditions of Article 41 which says that personality is determined by live birth. I would think that Articles 40 and 41 are not only settled, but are the most practical approach to the raging debate on the matter of human life. It lays as the criteria for its conclusion the individual biological criteria, with special emphasis on the physical separation of the fetus from the mother and the requirements of viability.
>
> I am alarmed by the way we tend to preempt this kind of discussion by invoking the claims of the righteousness of morality. These questions for me are transcendental that we cannot even attempt to address any conclusion on the matter unless we can address the question without temerity or without bigotry. Besides, the level of human knowledge on this debate is so severely restricted that to preempt the debate is, I guess, to preempt the deliberations and finally the possibility of agreement on the diverse theories on the matter.[139]

In response, Mr. Villegas dismissed the concerns and declared that the issue of the beginning of life is already settled.

> MR. VILLEGAS: Madam President, it is precisely because this issue is transcendental that we have to make also a transcendental statement. **There is no debate among medical scientists that human life begins at conception, so that is already a settled question**. We are talking about life. As I said, we are not talking about human personality, neither are we saying that the human person can be decided precisely by law, nor at what time it will have the right to property and inheritance. **The only right that we are protecting is the right to life at its beginning, which medical science genetics has already confirmed as beginning at conception.**[140] (Emphases supplied)

The Constitutional Commission deliberations show that it is not true that the issue of when life begins is already a settled matter. There are several other opinions on this issue. ***The Constitutional Commissioners adopted the term "conception" rather than "fertilized ovum.***"

New discoveries in reproductive science, particularly the possibility of cloning, provide basis for the possible significance of viable implantation in the uterus as the "beginning of life and personhood." It is at implantation when a group of cells gain the potential of progressing into a human being without further intervention.[141]

There are others who say that human life is defined by the presence of an active brain.[142] Without it, there is no human being.[143]

Another theory is that human life begins when organs and systems have already been developed and functioning as a whole, consistent with the idea that death happens upon cessation of organized functions of these organs and systems.[144] Zygote and embryonic stages are merely transitional phases.[145]

Others suggest that life begins when there is no more possibility of "twinning."[146]

There are also those who do not share the moral value and, therefore, the legal protection that can be given to a fertilized ovum even assuming that that would be the beginning of life.

During the Constitutional Commission deliberations, Rev. Rigos pointed out the need to "consider the sensibilities of other religious groups."[147] He asked:

> REV. RIGOS: x x x. But like a few people who spoke this morning, I am a bit disturbed by the second sentence: "The right to life extends to the fertilized ovum."
>
> In discussing this proposed sentence, did the Committee consider the sensibilities of some religious groups which do

> not look at the fertilized ovum as having reached that stage that it can be described as human life?[148]

Fr. Bernas answered: "Precisely, we used that word to try to avoid the debate on whether or not this is already human life." [149]

Later, Rev. Rigos asked if the aim of the clause could not be achieved through legislation.[150]

Bishop Bacani stated the reason for his belief why the matter could not be left to legislation. He said:

> x x x. We would like to have a constitutional damper already on the assault to human life at its early stages. And we realized that it can be possible to more easily change x x x easier to change legislation on abortion. Hence, we would like to be able to prevent those changes in the laws on abortion later.[151]

Rev. Rigos pointed out the differing opinions on the commencement of human life. He said that "[i]f we constitutionalize the beginning of human life at a stage we call fertilized ovum, then we are putting a note of the finality to the whole debate."[152] To this, Bishop Bacani said that there were people from other religions who were against abortion. He said:

> BISHOP BACANI: I would like to remind Reverend Rigos that when we talk about this, it is not a question of religious boundaries. In fact, let me just read what is contained in an article given by one of my researchers. It says that many scholarly Protestant and Jewish leaders are prominent in the pro-light movement – and they are referring to the anti-abortion movement. I do not want to put this simply on the denominational plain, and it is misleading to put it at that level.
>
> x x x x
>
> BISHOP BACANI: Because these are people who are not Catholics – who are Jewish, Protestants, even atheists – but who are against abortion. [153]

Rev. Rigos clarified that while Bishop Bacani was correct in describing the Protestant church's stance against abortion "on the whole," "x x x there is a big segment in the Protestant church that wishes to make a clear distinction between what we call abortion and miscarriage." [154]

A paper published in the Journal of Medical Ethics written by Cameron and Williamson summarizes various religious views on life's beginnings.[155] It was asserted that "[t]he Bible, the Koran, and the Talmud do not actually say when life begins, although each has been the subject of various interpretations."[156]

The traditional Catholic view is that life begins at fertilization.[157] However, even "[w]ithin the Catholic Church, there are differing views."[158] Cameron and Williamson mentioned subscription "to theories of 'delayed' or 'mediate' animation" or the infusion of the soul at points after fertilization.[159] There are also arguments that even distinguished theologians like St. Augustine and St. Thomas claim that a fetus becomes a person only between the 40th to 80th day from conception and not exactly at fertilization.[160]

Similar to the traditional Catholic view, Buddhism, Sikhism, and Hinduism believe that life begins at conception.[161]

Some Muslim scholars, according to Cameron and Williamson, believe that a fetus gains soul only in the fourth month of pregnancy or after 120 days.[162] Other Muslims believe that a six-day embryo is already entitled to protection.[163]

The view that life begins at fertilization was supported during the debates in the Constitutional Commission by the idea that a fertilized ovum always develops into a human life.

Commissioner Ms. Aquino observed:

> MS. AQUINO: I cannot. This is very instructive because as the Commissioner will note, even this Commission cannot settle the question of whether a fertilized egg has the right to life or not. Those experts in the field of medicine and theology cannot settle this question. It is bad enough for us to pre-empt this controversial issue by constitutionalizing the ovum; it would be doubly tragic for us to provide for ambiguities which may even disturb settled jurisprudence. [164]

Mr. Nolledo answered:

> MR. NOLLEDO: I do not think there is ambiguity because the **fertilized egg, in the normal course of events, will be developed into a human being, a fetus, and as long as the normal course of events is followed.** I think that the right to life exists and the Constitution should recognize that right to life. We do not presume accidents; we do not presume ambiguities. We presume that as long as it is categorized as a fertilized ovum, it will ripen into human personality.[165] (Emphasis supplied)

Unfortunately, this may be wrong science.

There are studies that suggest that a fertilized egg, in the normal course of events, does not develop into a human being. In Benagiano, et al.'s paper entitled *Fate of Fertilized Human Oocytes,*[166] it was shown that pre-clinical pregnancy wastage is at least 50%. Some estimate that the chance that pregnancy will proceed to birth may be as low as about 30%.[167] Some causes of this wastage are implantation failure, chromosome or genetic abnormality, and similar causes. If normalcy is defined by this percentage, then it is pregnancy wastage that is normal and not spontaneous development until birth. Based on these, there may be no basis to the presumption that a fertilized ovum will "ripen into human personality" as Mr. Nolledo suggested.

To highlight the fallibility of the Constitutional Commissioners, one of them argued that a fertilized ovum is human because it is the only species that has 46 chromosomes. Thus:

> MR. VILLEGAS: x x x. Is it human? Genetics gives an equally categorical "yes." At the moment of conception, the nuclei of the ovum and the sperm rupture. As this happens 23 chromosomes from the ovum combine with 23 chromosomes of the sperm to form a total of 46 chromosomes. **A chromosome count of 46 is found *only* — and I repeat, only — in human cells.** Therefore, the fertilized ovum is human. (Emphasis supplied)
>
> Since these questions have been answered affirmatively, we must conclude that if the fertilized ovum is both alive and human, then, as night follows day, it must be human life. Its nature is human.[168]
>
> MR. VILLEGAS: As I explained in the sponsorship speech, it is when the ovum is fertilized by the sperm that there is human life. Just to repeat: first, there is obviously life because it starts to nourish itself, it starts to grow as any living being, and it is human because at the moment of fertilization, **the chromosomes that combined in the fertilized ovum are the chromosomes that are uniquely found in human beings and are not found in any other living being**. [169] (Emphasis supplied)

Again, this is factually wrong.

A person who has Down's Syndrome may have 47 chromosomes.[170] Most persons who have Turner's Syndrome are one chromosome short or have 45 chromosomes.[171] Persons with these conditions are no less human than persons with 46 chromosomes. Meanwhile, there are also known species which have 46 chromosomes other than humans. A Reeves' Muntjac, for example, has 46 chromosomes.[172]

Then, there was the claim that the instances when there had to be a choice made between the life of the mother and the life of the zygote, fetus or child were few.

Mr. Villegas asserted:

> MR. VILLEGAS: As I stated in my sponsorship speech, 99 percent of the cases indicated that taking care of the health of the mother is taking care of the child and vice versa. Because of the progress of medical science, **the situations when a moral dilemma exists are very, very few**. The intention behind the statement is precisely for the State to make sure that it protects the life of the pregnant mother. She goes to all sorts of trouble as we have discussed in the provisions on health. Protecting the life of the mother, giving her all the necessary social services will protect the child. **So it happens only in very, very few instances** which we mentioned, like ectopic pregnancies when the fertilized ovum is implanted outside of the uterus. I repeat, medical science has made the situation very, very exceptional.
>
> x x x x
>
> MR. VILLEGAS: Madam President, as I said in response to the question yesterday of Commissioner Suarez, 99 percent of the cases related to protection of the mother's health, making sure that she is in the right working conditions and that she is not subjected to stress, show that there are so many things that can endanger the life of the unborn because the health of the mother is not sufficiently cared for. This is really a prolife provision which emphasizes the

> fact that in most instances, protecting the life of the mother is also protecting the life of the unborn.[173] (Emphasis supplied)

Taking care of the mother does not always mean taking care of the zygote, fetus or child. There are instances wherein in order to protect the life of the mother, the zygote, fetus or child may have to be sacrificed.

Implantation of the fertilized egg in areas outside the uterus such as the fallopian tube or ovaries may cause organ rupture and severe loss of blood. To save the mother's life, surgical removal[174] of the fertilized ovum may be necessary.

Pre-eclampsia/eclampsia or hypertension during pregnancy[175] is associated with increased perinatal mortality.[176] It may also result in other complications such as seizures, hemorrhage, or liver or kidney complications that may be life-threatening.[177] It may require premature delivery of the child to prevent further complications or when the life of the mother is already threatened by seizures or other complications.[178]

Meanwhile, pregnant persons who have cancer may have to choose between chemotherapy and risking harm to the developing embryo or fetus in her womb or not undergoing chemotherapy and risking her life.[179]

The Department of Health estimated that more than a thousand women died in 2009 for various causes. It is observed that most of these causes are the same complications that caused a moral dilemma between saving the mother and saving the child.[180]

MATERNAL MORTALITY: BY MAIN CAUSE			
Number, Rate/1000 Livebirths & Percent Distribution			
Philippines, 2009			
CAUSE	Number	Rate	Percent*
TOTAL	1,599	0.9	100.0
1. Complications related to pregnancy occurring in the course of labor, delivery and puerperium	655	0.4	41.0
2. Hypertension complicating pregnancy, childbirth and puerperium	513	0.3	32.1
3. Postpartum hemorrhage	286	0.2	17.9
4. Pregnancy with abortive outcome	142	0.1	8.9
5. Hemorrhage in early pregnancy	3	0.0	0.2
*Percent share to total number of maternal deaths			

In asserting that there are only a few instances of moral dilemma during pregnancy, Mr. Villegas insisted on the application of the doctrine of double effect. He stated:

> MR. VILLEGAS: x x x. And we said that even in those instances, which I consider to be less than one percent of the situation, there is a moral principle which we referred to as the principle of double effect in which if one has to save the life of the mother in an operation, it is morally and legally permissible to so operate even if the child will have to be indirectly sacrificed. There is no murder involved there because one does not intend the death of the child. One is correcting a medical aberration of the mother.
>
> x x x x
>
> MR. VILLEGAS: It is the same principle of double effect. If you are not killing the mother directly, if the operation is to save the child and there is the indirect effect of the mother's life being sacrificed, then I think the principle of double effect also applies.[181]

The principle of double effect is traceable to Thomas Aquinas in *Summa Theologiae*.[182] It is, therefore, a Christian principle that may or may not be adopted by all of the members of the medical community. There are even some who recommend its abandonment.[183]

A commissioner went on to point out that unwanted children become wanted children in practically all cases. Thus:

> BISHOP BACANI: Madam President, may I comment on the unwanted babies. I was reading this little book on a

> study of unwanted pregnancies and the interesting thing is this: In practically all cases, unwanted pregnancies became wanted babies. In fact, there were more unwanted pregnancies that became wanted babies than wanted pregnancies in the beginning which turned sour. [184]

Again, this claim is belied by the fact that there are reportedly, hundreds of children that are abandoned every year.[185] Apparently, abandonment and neglect are the most common cases of abuse among children, based on statistics.[186] Moreover, statistics shows that there is an average of 16% unwanted births, according to the 2008 National Demographic and Health Survey. [187]

Third, a generalized statement that life begins at fertilization of the ovum misunderstands the present science relating to the reproduction process.

Reproduction is a complex process whose features we need not tackle absent an actual controversy.

Framing the issue as an issue of right to life or the right to protection of the unborn from conception presupposes a prior conclusive scientific determination of the point when life commenced. It presupposes a conclusive finding as to the beginning of the existence of the unborn.

The court cannot declare that life begins at fertilization on the basis of a limited set of sources that may not constitute the consensus among the scientific community.

For the medical bases for the contention that life begins at fertilization some of the petitioners[188] cited medical textbooks and expert opinions. However, some respondents and respondents-intervenors, also had their own scientific textbooks, journals, and health organization statements to support their opposite contentions on the difference between fertilization and conception, and the importance of viability and clear establishment of pregnancy in determining life.[189]

We can infer from the existence of differing opinions on this issue that reproduction involves a complex process. Each part of this process provides a viable avenue for contention on the issue of life.

The reproductive process is not always characterized by continuity and spontaneity from fertilization to birth.

Fertilization happens when a single sperm penetrates the ovum or the egg.[190] The body has a mechanism that prevents "polyspermy" or more than one sperm from penetrating the egg.[191] Failure of this mechanism may cause issues on the viability of the fertilized egg.[192]

Fertilization is possible only as long as both the sperm and the ova remain alive.[193] Sperm have a lifespan of about three to five days inside a woman's body,[194] while an ovum remains capable of fertilization only about a few hours to a day after ovulation. [195] This means that fertilization can happen only within that specific period of time. No fertilization within this specific period means that both cells will disintegrate and die.

A fertilized egg stays in the fallopian tube for about three to four days.[196] It undergoes several cell divisions.[197] It reaches the uterus usually in its 16- or 32-cell state.[198] At this point, each cell resulting from the divisions is "totipotent" or may be capable of developing into an individual.[199]

A fertilized egg may enter the uterus to undergo further cell division, until it becomes what is known as a blastocyst, at which stage the cells lose their totipotentiality and start to differentiate.[200] The fertilized egg may also remain in the fallopian tube or proceed to other organs in the abdomen to undergo the same process.

About a week from ovulation, the fertilized egg starts to implant itself into the uterus[201] or fallopian tube/other abdominal organs to develop an embryo. The latter case is called ectopic pregnancy. When this happens, the embryo is not viable and must be surgically removed to prevent maternal hemorrhage.[202] There are times when no surgical removal is necessary because of spontaneous abortion.[203]

Around the time that the blastocyst starts embedding itself into the uterus, the hormone, chorionic gonadotropin, is secreted.[204] This hormone is detectable in the mother's blood and urine.[205] Pregnancy is usually determined by detecting its presence.[206] Thus, pregnancy is detected only after several days from fertilization.

Studies suggest that fertilization does not always proceed to a detectable pregnancy.[207] *Fertilization can become undetected because the fertilized ovum becomes wastage prior to a finding of pregnancy*.[208]

Every instance of cell division or differentiation is crucial in the reproductive process. Each step is a possible point of error. An

error, especially when it involves the genes, is a possible cause for termination of the reproductive process.[209]

It is during the first week after fertilization that the greatest losses appear to occur.[210] A review of literature on the fate of the fertilized egg in the womb estimates that about or at least 50% of fertilized eggs are wasted or "do[es] not produce a viable offspring."[211]

Wastage happens for different and natural reasons, among which are delayed or erroneous implantation and chromosomal or genetic abnormalities.[212] Apparently, a delayed implantation of a fertilized egg into the uterus, usually more than 12 days from fertilization, may reduce or eliminate the chance that pregnancy will proceed.[213] It is suggested that delayed implantation may be caused by delayed production or relatively low concentration of the chorionic gonadotropin hormone which leads to the degeneration of the corpus luteum.[214] The corpus luteum produces hormones that are essential to the maintenance of pregnancy especially during the first months.[215] These hormones are responsible for the thickening of the uterine muscles and the inhibition of uterine motility that will prevent the expulsion of the fetus from the womb.[216]

The huge percentage of losses of pre-implantation zygote provides basis for the argument that viability is a factor to consider in determining the commencement of life. These losses are not generally regarded as deaths of loved ones, perhaps because it occurs naturally and without the knowledge of the woman.

Hence, some[217] put greater emphasis on the importance of implantation on this issue than fertilization.

This value is shared by others including the American College of Obstetricians and Gynecologists, Code of Federal Regulations, and British Medical Association, among others.[218]

The reproductive process may also show that a fertilized egg is different from what it may become after individuation or cell specialization.

One argument against the belief that human existence begins at fertilization emphasizes the totipotency of the pre-implantation zygote.

David DeGrazia, for example, argues that while fertilization is necessary for a person's existence, it is not sufficient to consider it as a person.[219] At most, the zygote is only a precursor of a person.[220] It was stressed that several days after fertilization, a zygote is not yet uniquely differentiated.[221] Hence, it can still divide into multiple human beings or fuse with other zygotes to produce a chimera.[222] This mere possibility, according to DeGrazia belies the position that a zygote is identical with the individual or individuals that result from it.[223] DeGrazia states:

> Consider the zygote my parents produced in 1961, leading to my birth in 1962. I am not an identical twin. But that zygote could have split spontaneously, resulting in identical twins. If it had, presumably I would not have existed, because it is implausible to identify me with either of the twins in that counterfactual scenario. If that is right, then the existence of the zygote my parents produced was not sufficient for my existence, from which it follows that I am not numerically identical to that zygote. The very possibility of twinning belies the claim that we originated at conception. [224]

Further, as argued by DeGrazia, the mere fact that the cells are still subject to differentiation or individuation "belies the claim that we originated at conception."[225] Imputing moral or human status to an undifferentiated zygote means that a human (in the form of a zygote) dies every time a zygote multiplies to form two individuals.[226] DeGrazia doubts that many would accept the imagined implications of giving full moral status to a fertilized ovum: 1) Multiple pregnancy is a cause for mourning because essentially, a life is given up to produce at least two others; 2) There should be reason to support investments in research for the prevention of multiple pregnancies.[227]

DeGrazia characterizes a zygote as a single cell or "colony of cells"[228] whose functions are not yet wholly integrated, unlike in a human being.[229]

It was also emphasized that the potential to undergo a process that would eventually lead to being a full human being is not equivalent to being a full human being.[230] Advancements in technology point to the possibility of cloning from cells other than the sperm and the egg. Yet, this does not elevate the status of each cell as in itself a full human being.[231] Thus:

> Clearly, the single-cell zygote has the *potential* to develop in such a way that eventually produces one of us. (Note: I do not say that the single-cell zygote has the potential to *become* one of us – a statement that would imply numerical identity.) But the importance of this potential is dubious. Now that we know that mammals can be cloned from

> somatic cells – bodily cells other than sperm, eggs, and their stem-cell precursors – we know that, in principle, each of millions of cells in your body has the potential to develop into a full human organism. Surely this confers no particular moral status on your many individual cells; nor does it suggest that each cell is one of us. Once again, a full complement of DNA is not enough to make one of us.[232]

The argument that the use of ordinary body cells does not naturally lead to birth, according to DeGrazia, finds little weight when statistics of pre-implantation wastage is considered.[233] Statistics does not support the view that fertilization naturally leads to birth.[234] A fertilized egg still has to undergo several processes and meet certain conditions before it results to implantation or birth.

Further, there are policy dilemmas resulting from the court's premature determination of life's beginnings.

A corollary of the view that life begins at fertilization is that anything that kills or destroys the fertilized egg is "abortive."

The beginning of life is a question which can be most competently addressed by scientists or ethicists. A Supreme Court declaration of a scientific truth amidst lack of consensus among members of the proper community is dangerous in many contexts. One example is the occurrence of ectopic pregnancy.

Ectopic pregnancy occurs when the fertilized egg implants into parts or organs other than the uterus. [235] Ectopic pregnancy usually occurs in the fallopian tube.[236] Women who experience ectopic pregnancy must cause the removal of the developing embryo or she risks internal bleeding and death.[237]

Ectopic pregnancy can be treated using drugs or surgery depending on the size of the embryo and the status of the fallopian tube. [238] Smaller pregnancy and the inexistence of tubal rupture allow treatment through medications.[239] Medications will stop pregnancy growth without the need for removal of the fallopian tube.[240]

However, there are instances that necessitate surgical removal of the pregnancy, including the fallopian tube, to prevent harm to the woman.[241]

In any case, creating an all encompassing definition of life's beginnings to "equalize" the protection between the "unborn" and the mother creates a moral dilemma among the people whether to save the mother from the risk of life-threatening complications or whether to "save" a fertilized ovum that has no chance of surviving. This is most especially applicable among those involved such as the mother and the health care professionals.

Following a declaration in the ponencia that life begins at fertilization, the removal of a fertilized egg in an ectopic pregnancy must necessarily constitute taking of life. All persons involved in such removal must necessarily kill a fertilized ovum. A mother or a health care professional who chooses to remove the embryo to save the mother risks being charged or stigmatized for that conduct.

Similarly, such all encompassing declaration is dangerous especially when applied to fertilizations resulting from sexual assault or rape.

There are conflicting versions of the mechanisms of action of emergency conception. There are publications, for example, that find that a single dose of the most widely used emergency contraceptive, levonorgestrel (LNG) taken within five days of unprotected sex would protect a female from unwanted pregnancy by delaying or inhibiting ovulation.[242] Petitioners, on the other hand, believe that emergency contraceptives also prevent the implantation of a fertilized ovum into the uterus. They also cite distinguished scientific journals such as the Annals of Pharmacotherapy.[243]

This lack of public consensus coupled with an official declaration from this court that life begins at fertilization could immobilize a rape victim from immediately obtaining the necessary emergency medication should she wish to prevent the unwanted pregnancy while there is still time. It may create ethical pressure on the victim to assume the repercussions of acts that are not her fault.

Insisting on a determination of when life begins also unnecessarily burdens the ethical dilemma for assisted reproductive technologies.

Assisted reproductive technologies (ART) refer to "all fertility treatments in which both eggs and sperm are handled. In general, ART procedures involve surgically removing eggs from a woman's ovaries, combining them with sperm in the laboratory, and returning them to the woman's body or donating them to another woman. They do NOT include treatments in which only sperm are handled (i.e. intrauterine—or artificial—insemination) or procedures in which a woman takes medicine only to stimulate egg production without the intention of having eggs retrieved."[244] Others include among the ART procedures intrauterine insemination, in vitro fertilization, sperm donation, egg donation, and surrogacy or gestational carrier.[245] I focus on in vitro fertilization.

In in vitro fertilization, the ovaries are stimulated to produce multiple eggs.[246] The produced eggs are retrieved from the woman's body for insemination.[247] A sufficient number of healthy embryos are transferred to the woman's womb after fertilization.[248] Multiple embryos are sometimes transferred to the womb to increase the chances of pregnancy, in which case, multiple births are likely to happen.[249] Unused healthy embryos may be frozen for later use or for donation.[250] Disposal of embryos is also an option for some.[251]

The ethical dilemma arises with respect to the unused embryos. A conflict of interest is created between the fate of the mother and the fate of the embryos. If life begins at fertilization, disposal of surplus embryos means disposal of several human lives. At the same time, a mother or anyone else cannot be forced to conceive a child or donate an embryo to another.

I believe that when presented with a like but actual case, it should be the parents who should make the choice whether to use the surplus embryos or to dispose it if allowed by law.

When exactly life begins is not in issue in this case.

We should avoid this issue because this court lacks the competence to determine scientific, ethical or philosophical truths. Just as it should not easily accept purported truths propounded by parties to support their causes for or against reproductive health, this court should also not so easily dismiss views as "devoid of any legal or scientific mooring" [252] or having been "conceptualized only for convenience by those who had only population control in mind."[253]

The ponencia emphasizes this court's statement in *Continental Steel v. Hon. Accredited Voluntary Arbiter Allan S. Montano* that "a child inside the womb already has life".[254] But *Continental Steel* involves the issue of whether respondent in that case was entitled to death and accident insurance claim after his child had been prematurely delivered at 38 weeks and immediately died.

At 38 weeks, viability is less an issue compared to a fertilized egg. A fertilized egg will still have to successfully undergo several processes, cell divisions, implantations, and differentiations for a chance at even developing recognizable fetal tissues. This court said:

> **Even a child inside the womb already has life**. No less than the Constitution recognizes the **life of the unborn from conception**, that the State must protect equally with the life of the mother. If the unborn already has life, then the cessation thereof even prior to the child being delivered, qualifies as death.[255] (Emphasis supplied)

This court was not making a declaration that a fertilized egg already constitutes a child inside a womb and a declaration as to when life begins. Applied in the context of that case, this court was merely saying that the 38-week, prematurely born child was already a child for purposes of the award of the death and accident insurance claim under the Collective Bargaining Agreement.

IV
Section 9 and Abortifacient Effects

The petitions, having alleged no actual controversy, also furnish no justification to strike down any portion of Section 9 of Republic Act No. 10354 as unconstitutional. This provides:

> SEC. 9. The Philippine National Drug Formulary System and Family Planning Supplies. – ***The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies***. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. ***For the purpose of this Act, any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.***
>
> These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: Provided, further, That the foregoing offices shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent. (Emphasis supplied)

Petitioners argue that the law violates the right to health because allowing general access to contraceptives by including them in the national drug formulary and in the supplies of national hospitals means that the citizens are being exposed to several health risks such as different types of cancer, thromboembolytic events, myocardial infarction, and stroke, among others.

Petitioners point to no specific drug or contraceptive. They produce medical journals which tend to support their justification and ask this court to accept them as gospel truth. On the other hand, respondents also show journals that support their claims.

The petitioners misread this provision.

The law specifically grants the Food and Drug Administration (FDA) with the competence to determine the scientific validity of the allegations of the petitioners. The FDA is mandated to examine each and every drug, contraceptive or technology vis-a-vis the claims made for or against their inclusion.

I agree with the ponencia in withholding any blanket pronouncement of any contraceptive absent the exercise of the FDA of its functions under this provision. The FDA is mandated to ensure the safety and quality of drugs released to the public.[256]

Generalizations and exaggerated claims are symptomatic of anguished advocacies. The angst that accompany desperate attempts to convince often push well-meaning advocates to magnify fears that go beyond the reasonable.

The argument that drugs that may be abused should not be made available to the public is perhaps more dangerous to public health than a total ban on contraceptives. It is a proposed policy that misunderstands the effect of any kind of drug on the human body. It is, thus, arbitrary and without reason.

Drugs aim to affect our bodily processes to achieve a desired outcome.[257] They work by targeting and interacting with cell receptors, enzymes and/or other substances in our body so that the desired change in our chemical processes and/or physiological functions can be effected.[258]

However, our bodies are complex systems. Targeted receptors and/or enzymes may exist in non-target areas.[259] They may have structural similarities with non-target receptors and/or enzymes. Thus, while drugs in general are designed for a specific purpose, the complexities of our systems allow for a relatively generalized effect. There are unintended effects that are often called the "side effects."[260] This is a property that is not exclusive to contraceptive drugs. It is a property of drugs in general.

Aspirin, for example, is advisable for thromboembolic disorders, stroke or for the prevention of cerebrovascular events.[261] Abusing the use of aspirin, however, may cause gastrointestinal bleeding. [262]

Aldomet is a drug usually taken to relieve hypertension.[263] When abused, its reported side effects include maladjustments affecting the nervous system, blood, and the liver. Among the reported reactions are sedation, headache, psychic disturbances, hepatitis, and hemolytic anemia.[264]

Even drinking too much water may cause hyponatremia, which is the low sodium concentration in the plasma.[265]

Side effects are expected with every drug from the weakest to the most potent. Their prescriptions are trade-offs between all the benefits and risks associated with it. Every drug should be taken to address the ailment but in a way that minimizes the risk. This is usually why there are proper dosages and time periods to take medicines. This is also why some medicines are not dispensed without the proper prescription.

Several drugs are not prescribed when there is pregnancy because of the fetal risks associated with them. Among these are Xenical (orlistat) used as a nutrition pill, Advil and any kind of Ibuprofen (during the third trimester) used to manage pain, Testim (testosteron) given for endocrine disorders, Flagyl (metronidazole) to manage infection, Crestor (rosuvastatin) to manage cholesterol, Vistaril (hydroxyzine) usually given for allergic reactions, and many more.[266]

The use of these drugs is appropriately limited so that they cannot have the effect or be used as abortifacients. This does not mean, however, that they are, per se, abortifacients.

The policy embedded in the law is that the proper use of contraceptives will prevent unwanted pregnancy and, therefore, also prevent complications related to pregnancy and delivery.[267] The risks of its usage, when proper and guided, can be relatively low compared to its benefits.[268] More specifically, the FDA is most competent in examining the scientific and medical basis of the beneficial claims and risks of each and every contraceptive. Drugs may or may not be included in the Essential Drugs List, based on the FDA's findings. It is not for this court to jump to conclusions on the basis of the ad hoc presentations of medical journals from the parties. This finding of fact should be left to the proper agency. There is an indefinite scope of possible scenarios precisely because there was no actual case or controversy brought before this court. If applying the law to even one of these possibilities may render it constitutional, then we should not declare it as unconstitutional. The doctrine on the presumption of constitutionality must prevail when there is no factual basis to invalidate the law.[269]

Only safe and effective medicines are included in the drug formulary.

The inclusion of contraceptives in the national drug formulary is not new. The Philippine Drug Formulary: Essential Medicines

List, Volume 7, of 2008 already listed it under "Hormones and Hormone Antagonists."[270]

Contraceptives are included, following five pillars designed to make available affordable, safe, and effective drugs to the public. These pillars are: (1) "the assurance of the safety, efficacy and usefulness of pharmaceutical products through quality control;" (2) "the promotion of the rational use of drugs by both the health professionals and the general public;" (3) "the development of self-reliance in the local pharmaceutical industry;" (4) "[t]he tailored or targeted procurement of drugs by government with the objective of making available to its own clientele, particularly the lower-income sectors of the society, the best drugs at the lowest possible cost;" and (5) "people empowerment."[271]

One of the steps for inclusion in the drug formulary is to ensure that the drug is of "acceptable safety, proven efficacy, quality, and purity".[272] Ensuring that health products are safe, efficient, pure, and of quality is a function of the Food and Drug Administration.[273] Moreover, Republic Act No. 4729 requires that contraceptive drugs and devices cannot be lawfully dispensed without proper medical prescription.

V
Conscientious Objector

The ponencia proposes to declare the provision relating to the mandatory referral of a conscientious objector as unconstitutional because it violates the right to religion. I also disagree.

The sections involved provides:

> SEC. 7. Access to Family Planning – All accredited public health facilities shall provide a full range of modern family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children: *Provided*, That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group but they have the option to provide such full range of modern family planning methods: *Provided further,* ***That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible:*** *Provided finally*, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344.
>
> SEC. 23. Prohibited Acts. – The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> x x x x
>
> (3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: ***Provided, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible***: Provided, further, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases[.] (Emphasis supplied)

The patient's rights

Doctors routinely take an oath implying that the primordial consideration in their services is the welfare of their patients. The form of the Physician's Oath adopted by the World Medical Association is what is now known as the Declaration of Geneva, to wit:

> At the time of being admitted as a member of the medical profession:
>
> I solemnly pledge to consecrate my life to the service of humanity;
>
> I will give to my teachers the respect and gratitude that is their due;
>
> I will practice my profession with conscience and dignity;
>
> ***The health of my patient will be my first consideration;***
>
> I will respect the secrets that are confided in me, even after the patient has died;

I will maintain by all means in my power, the honor and the noble traditions of the medical profession;

My colleagues will be my sisters and brothers;

I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient;

I will maintain the utmost respect for human life;

I will not use my medical knowledge to violate human rights and civil liberties, even under threat;

I make these promises solemnly, freely and upon my honor.[274] (Emphasis supplied)

Many of those who specialize in the ethics of the health profession emphasize the possibility of a health service provider inordinately abusing conscientious objection over the welfare of the patient. Thus,

> Physicians' rights to refuse to participate in medical procedures that offend their conscience may be incompatible with patients' rights to receive lawful, medically indicated treatment. Historically, the goal of medicine has been to provide care to the sick. The World Medical Association's modern variant of the Hippocratic Oath, the Declaration of Geneva, inspires the graduating physician to pledge that, "The health of my patient will be my first consideration". For many who enter medicine, the commitment to assist their fellow human beings and pursue a path of personal salvation through this professional calling is religiously inspired. A conflict of interest can arise if the physician's religious or other conscientious convictions are in tension with medically indicated procedures. The obvious case is therapeutic abortion, but analogous cases include contraceptive sterilization and withdrawal of life support from otherwise viable patients. Physicians who give priority to their own moral and spiritual convictions over their patients' need and desire for medically indicated care face a conflict that needs resolution.
>
> The ethical conflict can be avoided through mutual accommodation; physicians have the right to decide whom to treat, and patients have the right to decide from whom they will receive care. Physicians do not have the same ethical duties to nonpatients as to patients except in emergency circumstances. In all other circumstances, physicians are at liberty to choose those for whom they will accept the responsibility of care. If there are services they will not perform, physicians should make the fact known to patients for whom they have accepted responsibility. Doing so not only saves patients the distress of seeking those services and being turned down, it also saves physicians from the dilemma of unfulfilled responsibilities to those whose care they have agreed to undertake. This arrangement is well understood in medicine; physicians who notify prospective patients that they are, for instance, pediatricians, will not be asked to treat those requiring geriatric care, and geriatricians who do not have to accept patients seeking pediatric services. More explicit disclosure is required, of course, when prospective patients may reasonably expect that care will be available from the specialists they approach. Obstetrician-gynecologies who will not participate in abortion procedures must make that fact clear before forming patient-physician relationships."[275]

If the first and primordial consideration is the health of her or his patient, then the beliefs of the service provider even though founded on faith must accommodate the patient's right to information. As stated in the Code of Ethics of the Philippine Medical Association:

ARTICLE II
DUTIES OF PHYSICIANS TO THEIR PATIENTS

> ***Section 5. A physician should exercise good faith and honesty in expressing opinion/s as to the diagnosis, prognosis, and treatment of a case under his/her care***. A physician shall respect the right of the patient to refuse medical treatment. Timely notice of the worsening of the disease should be given to the patient and/or family. A physician shall not conceal nor exaggerate the patient's conditions except when it is to the latter's best interest. ***A physician shall obtain from the patient a voluntary informed consent***. In case of unconsciousness or in a state of mental deficiency the informed consent may be given by a spouse or immediate relatives and in the absence of both, by the party authorized by an advanced directive of the patient. Informed consent in the case of minor should be given by the parents or guardian, members of the immediate family that are of legal age. (Emphasis supplied)

If a health care service provider's religious belief does not allow a certain method of family planning, then that provider may possibly withhold such information from the patient. In doing so, the patient is unable to give voluntary informed consent to all possible procedures that are necessary for her or his care.

The law, in sections 17 and 23 allow accommodation for full care of the patient by requiring referral. The patient that seeks health care service from a provider should be able to put his or her trust on the provider that he or she would be referred to the best possible option. There is nothing in the law which prevents the referring health care provider from making known the basis of his or her conscientious objection to an available procedure which is otherwise scientifically and medically safe and effective.

Between the doctor or health care provider on the one hand and the patient on the other, it is the patient's welfare and beliefs which should be primordial. It is the patient that needs the care, and the doctor or health care provider should provide that care in a professional manner.

> While providers have a right to their moral beliefs, the right does not allow health-care providers to violate their professional and legal obligations to the patient. Policies on health-care provider refusals should be carefully crafted to maximize the rights of individuals to their beliefs without extending this "protection" so far that it prevents patients from getting the medical care or information they need.[276]

The holding of the majority which declares the mandatory referral systems in Section 17 and Section 23, paragraph (a) (3) as unconstitutional on the basis of the right of religion of the doctor or health care provider implicitly imposes a religious belief on the patient.

It is in this context that many experts say that:

> Religious initiatives to propose, legislate, and enforce laws that protect denial of care or assistance to patients, (almost invariably women in need), and bar their right of access to lawful health services, are abuses of conscientious objection clauses that aggravate public divisiveness and bring unjustified criticism toward more mainstream religious beliefs. ***Physicians who abuse the right to conscientious objection and fail to refer patients to non-objecting colleagues are not fulfilling their profession's covenant with society.***[277]

We must not assume that situations involving the duty to refer cover information or services that may be objectionable only to a specific religious group. Neither can we assume, for example, that the situation would always involve an extreme case such that a patient would seek an abortion.

There are, in fact, many reasons why a patient would seek information or services from a health professional. To be sure, when we speak of health care services and information under Section 23(3) of the law, we refer to a "full range of methods, facilities, services and supplies that contribute to reproductive health and well-being."[278]

Considering that the law is yet to be implemented, there are no facts from which this court can base its ruling on the provision. We cannot and must not speculate.

Conscientious objection and religious objection

There is a difference between objections based on one's conscience and those based on one's religion. Conscience appears to be the broader category. Objections based on conscience can be unique to the individual's determination of what is right or wrong based on ethics or religion. Objections based on religion, on the other hand, imply a set of beliefs that are canonical to an institution or a movement considered as a religion. Others share religious belief. Conscientious objection may also include those whose bases are unique only to the person claiming the exception. One's conscience may be shaped by cultural factors other than religion. It is clear that a conscientious objector provision whose coverage is too broad will allow too many to raise exception and effectively undermine the purpose sought by the law.[279]

The duty to refer is also found in Section 7 of the law:

> SEC. 7. *Access to Family Planning.* – All accredited public health facilities shall provide a full range of modern family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginal couples having infertility issues who desire to have children: Provided, That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods: ***Provided, further,*** **That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible**: Provided, finally, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344.
>
> x x x x (Emphasis supplied)

The same considerations for individual health practitioners should apply to private health institutions. Private health institutions are duty-bound to prioritize the patient's welfare and health needs.

Requirements of a challenge based on religion

The constitutional provision invoked by petitioners provides:

> Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.[280]

The provision contains two parts. The first part is the non-establishment clause.[281] This contains a proscription against the direct or indirect state sponsorship of a religion and is closely related to another fundamental tenet in the Constitution, which provides:

> Section 6. The separation of Church and State shall be inviolable.[282]

The second part is the free exercise of religion clause.[283] The protection to "religious profession and worship" is absolute when it comes to one's belief or opinion. The balance between compelling state interests and the religious interest must, however, be struck when the "profession and worship" are expressed in conduct which affect other individuals, the community or the state. Religious conduct or omissions on the basis of religious faiths are not absolutely protected.

In *Iglesia Ni Cristo v. Court of Appeals,*[284] this court reiterated the rule that:

> x x x the exercise of religious freedom can be regulated by the State when it will bring about the clear and present danger of some substantive evil which the State is duty-bound to prevent, i.e., serious detriment to the more overriding interest of public health, public morals, or public welfare. A laissez faire policy on the exercise of religion can be seductive to the liberal mind but history counsels the Court against its blind adoption as religion is and continues to be a volatile area of concern in our country today. Across the sea and in our shore, the bloodiest and bitterest wars fought by men were caused by irreconcilable religious differences.[285]

Then in *Estrada v. Escritor,*[286] this court clarified:

> Although our constitutional history and interpretation mandate *benevolent neutrality, benevolent neutrality does not mean that the Court ought to grant exemptions every time a free exercise claim comes before it. But it does mean that the Court will not look with hostility or act indifferently towards religious beliefs and practices and that it will strive to accommodate them when it can within flexible constitutional limits; it does mean that the Court will not simply dismiss a claim under the Free Exercise Clause because the conduct in question offends a law or the orthodox view for this precisely is the protection afforded by the religion clauses of the Constitution, i.e., that in the absence of legislation granting exemption from a law of general applicability, the Court can carve out an exception when the religion clauses justify it.* While the Court cannot adopt a doctrinal formulation that can eliminate the difficult questions of judgment in determining the degree of burden on religious practice or importance of the state interest or the sufficiency of the means adopted by the state to pursue its interest, the Court can set a doctrine on the ideal towards which religious clause jurisprudence should be directed. *We here lay down that doctrine that in Philippine jurisdiction, we adopt that benevolent neutrality approach not only because our constitutional history and interpretation indubitably show that benevolent neutrality is the launching pad from which the Court should take off in interpreting religion clause cases. The ideal towards which this approach is directed is the protection of religious liberty 'not only for a minority, however small – not only for a majority, however large – but for each of us' to the greatest extent possible within flexible constitutional limits*.[287]

The same case also cited the "*Lemon test*" which states the rules in determining the constitutionality of laws challenged for violating the non-establishment of religion clause:

> First, the statute must have a secular legislative purpose; second, its primary or principal effect must be one that neither advances nor inhibits religion; x x x finally, the statute must not foster 'an excessive entanglement with religion.[288]

However, the application of these standards first requires the existence of an actual case involving (1) a specific conduct (2) believed to be related to profession or worship (3) in a specific religion.

The basis for invoking the right to religion is not always clear. For instance, there is no single definition of religion.

The common dictionary meaning is that it is "an organized system of beliefs, ceremonies, and rules used to worship a god or a group of gods."[289] Another dictionary meaning is that "religion may be defined broadly as the human quest for, experience of, and response to the holy and sacred."[290] An author in a journal on ethics asserts that "religion is the effective desire to be in right relations to the power manifesting itself in the universe."[291]

In *Aglipay v. Ruiz*,[292] this court adopted a bias toward theistic beliefs when it defined religion "as a profession of faith to an active power that binds and elevates man to his Creator x x x."[293] But there are beliefs commonly understood to be religious which are non-theistic. Courts have grappled with the definition of a religion.[294]

But these could not be issues in this case because there are no actual facts upon which we could base our adjudication.

None of the petitions allege the conduct claimed to be part of "profession or worship". None of the petitions point to how this specific conduct relates to a belief or teaching of a religion. None of the petitions show how fundamental to the specific religious faith such conduct is.

In other words, the petitions do not show a specific instance when conscientious objection was availed of as a result of the exercise of a religion. In this case, we are asked to evaluate whether the provision that accommodates conscientious objectors would, in the future, with unspecified facts, violate the constitutional provision on religious exercise.

Thus, it is also not clear in the ponencia whether the provisions on referral by conscientious objectors are declared unconstitutional for all religions or only for specific ones. This is the natural result for speculative cases. This is dangerous constitutional precedent. If the declaration is for all religions, then this might just result in a violation of the non-establishment clause. A dominant majoritarian religion is now aided in imposing its beliefs not only on patients but also on all those who have different faiths.

Conduct which purport to be religious practice and its relationship to the fundamental tenets of that religion is a question of fact which cannot be part of our judicial notice. Otherwise, we implicitly establish a religion or manifest a bias towards one in violation of the clear and absolute separation between church and state.

Contraceptives and Religion

Even the proscription on the use of contraceptives may not clearly be a religious tenet. We do not have the competence to assume that it is so.

With respect to the Catholic faith, the comment-in-intervention of De Venecia, et al. included a history on the Catholic Church's changing and inconsistent position regarding contraceptives, and the notion that every conjugal act must be for a procreative purpose.

The intervenors asserted that the notion denouncing sex without procreative intent cannot be found in the old or new testament. During the church's existence in the first few hundred years, the issue of the church was not on the purpose of the conjugal act but on the specific methods for contraception as some were associated with witchcraft.[295] The idea that requires the procreative purpose for the sexual act was not originally Christian but borrowed from pagan Greek Stoics during the early second century:

> As James Brundage has pointed out, the immediate source of influence on Christian writers was the pagan Stoics, whose high ideals for morality challenged the Christians to copy them or even do better. Natural law or the law of nature was the basis for these ideals. The famous Stoic jurist Ulpian supplied to Christian writers their understanding of natural law. For Ulpian, natural law consisted in the laws of nature that animals and humans had in common. Among the domestic animals with which Ulpian was familiar, the female accepted the male only when she was in heat. ***So it was the law of nature for humans and animals alike that sexual intercourse should only take place for breeding.***[296] (Emphasis supplied)

The Catholic Church through Pope Paul VI later secretly created a Pontifical Commission for the Study of Population, Family and Births to recommend whether modern contraceptive methods could be permitted.[297] The commission's final report concluded, by two-third votes, that "no natural law proscribed non-reproductive sex and no doctrinal, scientific, medical, social or other reason existed for the church to continue prohibiting the use of modern birth control."[298]

Despite these findings, two ultraconservative members issued a minority report arguing that "the Vatican's authority would be irreparably undermined if it abandoned a position it had adopted hundreds of years earlier."[299]

Consequently, Pope Paul VI issued *Humanae Vitae* reiterating Pope Pius XI's 1930 encyclical *Casti Connubii* on natural law's proscription against sex without procreative intent.[300] The commission's creation and its reports were leaked to the public, resulting in mass protests and defiance within the church.[301]

Intervenors quoted at length a detailed account of these events surrounding the *Casti Connubii and Humanae Vitae,* thus:

> Nervous prelates in Rome felt that the pill was just an excuse to jettison the Vatican's position on birth control, which was resented and under siege. The euphoria over new freedoms was part of the social giddiness that characterized the 1960s, in the church as in the secular world. It was a time of the sexual revolution, feminism, and new attitudes toward authority. In this atmosphere, the papal pronouncements about natural law were brought under closer scrutiny by natural reason, and they grew flimsier with every look. There was great fear in the Curia of the Vatican that this mood would invade the Council Pope John was assembling (as, in fact, it did). ***The whole matter of birth control was considered especially endangered, and it would be fought over strenuously in two Roman arenas, one open and one Secret. The former battle, carried on in the sessions of the Vatican Council, reached a kind of stalemate in the conciliar decree on the church in the modern world, Gaudiumet et Spes. The other battle, waged in secret by the Pope's own special commission, led to that commission's stunning defeat by the Pope's own encyclical Humanae Vitae***.[302] (Emphasis supplied)

Humanae Vitae

That Pontifical Commission met five times, at first in the fall of 1963 - six men convening at Louvain. The second meeting (like all subsequent ones) was in Rome, in the spring of 1964, attended by the thirteen men. The number was increased to fifteen for a meeting that summer. Up to this point, no one had presumed to recommend altering the church's teaching on contraception. Things changed at the fourth session, held in the spring of 1965, when the size of the commission jumped up to fifty- eight, with five women among the thirty-four lay members. An expert called in for consultation was John T. Noonan, from Notre Dame in Indiana, whose study of the church's changing positions on usury had won scholarly acclaim. He was working on a similar study of changes in the prohibition of contraception - a book that would appear just as the commission was disbanded. Noonan opened the members' eyes to the way that noninfallible papal teaching can develop.

Another eye opener was the result of a questionnaire brought to Rome by the lay couple Pat and Patty Crowley. They had long been active in the international Christian Family Movement, and they had surveyed their members - devout Catholics all - on their experience of the rhythm method of contraception. They found it far from natural- Since a woman's period fluctuates with her health, anxieties, age, and other influences, establishing the actual infertile period in any cycle required daily charting of her temperature and close comparative reading of calendars - and even then the results were not Sure. The most conscientious catholics, who followed this nervous procedure with precision, found that it was not certain - which left them in great fear until the next menstruation (which might not occur). And in this concentration on the wife's physical conditions, her psychological patterns - of fondness, need, crises, travel - had to be ignored or repressed. The comments of the couples surveyed made riveting reading in the commission. A husband, a scholar, wrote:

> Rhythm destroys the meaning of sex act; it turns it from a spontaneous expression of spiritual and physical love into a mere bodily sexual relief; it makes me obsessed with sex throughout the month; it seriously endangers my chastity; it has a noticeable effect upon my disposition toward my wife and children; it makes necessary my complete avoidance toward my wife for three weeks at a time. I have watched a magnificent spiritual and physical union dissipate and, due to rhythm, turn into a tense and mutually damaging relationship. Rhythm seems to be immoral and deeply unnatural. It seems to be diabolical.

His wife gave her side of the story:

> I find myself sullen and resentful of my husband when the time of sexual relations finally arrives. I resent his necessarily guarded affection during the month and I find I cannot respond suddenly. I find, also, that my subconscious and unguarded thoughts are inevitably sexual and time consuming. All this in spite of a great intellectual and emotional companionship and a generally beautiful marriage and home life.

The commission was hearing that rhythm made people obsessed with sex and its mechanics while minority members at the Council were arguing that rhythm allows people to escape the merely animal urges and enjoy the serenity of sexuality transcended. The commission was also hearing from doctors that nature, of course, provides women with their greatest sexual desire at just the fertile time that rhythm marked off bounds.

The combined impact of Noonan's history and the Crowley's empirical findings made the commission members - good Catholics all, chosen for their loyalty to the church - look honestly at the "natural law" arguments against contraception and see, with a shock, what flimsy reasoning they had accepted. Sex is for procreation, yes - but all the time, at each and every act? Eating is for subsistence. But any food or drink beyond that necessary for sheer subsistence is not considered mortally sinful. In fact, to reduce to that animal compulsion would deny symbolic and spiritual meanings in shared meals - the birthday party, the champagne victory dinner, the wine at Cana, the Eucharist itself. Integrity of the act? Is it sinful to be nourished intravenously when that is called for? Does that violate the integrity of the eating act? The more assembled members looked at the inherited "wisdom" of the church, the more they saw the questionable roots from which it grew - the fear and hatred of sex, the feeling that pleasure in it is a biological bribe to guarantee the race's perpetuation, that any use of pleasure beyond that purpose is shameful. ***This was not a view derived from scripture or from Christ, but from Seneca and Augustine.***

The commission members, even trained theologians and spiritual counselors who had spent years expounding the church teachings, felt they were looking at reality for the first time. A cultivated submission to the papacy had been, for them, a structure of deceit, keeping them from honesty with themselves, letting them live within a lie. ***To their shared surprise they found they were not only willing to entertain the idea of the church's changing, but felt that it had to change on this matter, that the truth, once seen, could no longer be denied. When the nineteen theologians on the commission, convened for a separate vote, were asked whether church teaching could change on contraception, twelve said yes, seven no (including John Ford, who had joined the commission at this meeting).***

This set off alarm bells in the Vatican. For the next meeting, the last and the longest, from April to June of 1965, the members of the commission were demoted to "advisers" (periti) and the commission itself was constituted of sixteen bishops brought in to issue the final report. They would listen to those who had done the actual conferring, and theirs would be the final verdict. Debate before them would be presided over by Cardinal Ottaviani of the Holy Office. This bringing in the big guns would have cowed the members in their first sessions. But things had gone too far for such intimidation now. The Crowleys brought another survey with them to the showdown, this one of 3,000 Catholics - including 290 devout subscribers to the magazine St. Anthony's Messenger - of whom 63 percent said that rhythm had harmed their marriage and 65 percent said that it did not actually prevent conception, even when the right procedures were followed exactly (even neurotically). Dr. Albert Gorres spoke of the self- censorship Catholics had exercised over themselves - something the members recognized in their lives when it was pointed out. The Jesuit priest Josef Fuchs, who had taught *Casti Connubii* standards for twenty years, said he was withdrawing his moral textbook and resigning his teaching post at the Gregorian University in Rome now that he could no longer uphold what he was asked to profess. ***The vote of the theologians who were presenting their findings to the bishops was now fifteen to four against the claim that conception is intrinsically evil. The vote of the larger group was thirty to five.***

Here was a perfect laboratory test of the idea that contraception is against nature, as that can be perceived by natural reason alone. These people were all educated, even expert. They were Catholics in good standing (they had been chosen on those grounds). They had been conditioned all their lives to accept the church’s teaching - in fact they had accepted it in the past. They of all people would entertain the official case with open minds. They had no malice against church authorities - most of them had devoted much (if not all) of their lives to working with them. Most had entered the project either agreeing with the papal position or thinking that it was unlikely to change. Now they found themselves agreeing that change was not only necessary but inevitable. They had trouble imagining how they had ever thought otherwise. Cardinal Suenens explained how they had been conditioned to have a double consciousness, to live a lie:

> For years theologians have had to come up with arguments on behalf of a doctrine they were not allowed to contradict. They had an obligation to defend the received doctrine, but my guess is they already had many hesitations about it inside. As soon as the question was opened up a little, a whole group of moralists arrived at the position defended by the majority here. . . The bishops defended the classical position, but it was imposed on them by authority. The bishops didn't study the pros and cons. The received directives, they bowed to them, and they tried to explain them to their congregations.

As soon as people began to think independently about the matter, the whole structure of deceit crumbled at the touch. The past position could not be sustained, even among these people picked by the Vatican itself, much less among Catholics not as committed as these were. And it was absurd to speak of the non-Catholic world as ever recognizing this "natural law of natural reason."

The need to face the prospect of change was impressed on the people in the commission by the arguments of the five theologians defending *Casti Connubii*. They reduced their own case to absurdities. John Ford said that intercourse is not necessary for marital love: "Conjugal love is above all spiritual (if the love is genuine) and it requires no specific carnal gesture, much less its repetition in some determined frequency." Ford also liked to say that, if the teaching on sexual activity only for procreation were changed, people could rnasturbate with impunity. Dr. Gorres quoted the Melchite Patriarch, Maximos IV, who said in the Council deliberations that priests display a "celibate psychosis" in the area of sex. ***

The climactic vote of the commission - the one of the sixteen bishops - was nine to three for changing the church's position on contraception, with three abstentions. An agreement had been reached before the vote was taken to submit only one report for the commission, but Cardinal Ottaviani and Father Ford, seeing how things were going, had prepared a document of their own, which would later be misrepresented as an official minority document. There was only one official document, the sole one voted on by the bishops who had authority to report the body's findings. (Ottaviani was the one who had brought in these officials, hoping to get the result he wanted. When he failed to, he ignored his own device.)

The Ford "report", drawn up with Germain Grisez, said that any change was inconceivable. This was not because there were rational arguments against change: "If we could bring forward arguments which are clear and cogent based on reason alone, it would not be necessary for our Commission to exist, nor would the present state of affairs exist in the church." No, the real reason to keep the teaching was that it was the teaching: "The Church could not have erred though so many centuries, even through one century, by imposing under serious obligations very grave burdens the name of Jesus Christ, if Jesus Christ did not actually impose these burdens." ***As a priest had put it in earlier debate, if the church sent all those souls to hell, it must keep maintaining that that is where they are.***

This was not an argument that made sense, at this point, to the commission - to bishops any more than to the theologians or lay experts. But it was the one argument that, in the end, mattered to Paul VI. He took advantage of the so-called "minority report" to say that he could not accept the commission's findings since there had been disagreement with it. Nine of the twelve bishops, fifteen of the nineteen theologians, and thirty of the thirty-five nonepiscopal members of the commission were not enough for him. Votes on the decrees in the Council had not been unanimous either, but he did not call them invalid for that reason. Paul's real concern was with the arguments that Ottaviani brought to him after the report was submitted. He knew what was worrying the Pope, and could play on that. F.X. Murphy had observed one thing about Paul's behavior throughout the meetings of the Council:

> The Pope was a man obviously torn by doubts, tormented by scruples, haunted by thoughts of perfection, and above all dominated by an exaggerated concern - some called it an obsession - about the prestige of his office as Pope. His remarks on this score at times displayed an almost messianic fervor, a note missing in the more sedate utterances of his predecessors. His innumerable statements on the subject were made on almost every occasion, from casual week-day audiences of Sunday sermons from the window of his apartment to the most solemn gatherings in season and out of season. Since it was part of the strategy of the [conciliar] minority to accuse the majority of disloyalty toward the Holy Father' Paul's constant harping-in inevitably caused the majority to think that he perhaps did share these misgivings, at least to a certain extent. It was noticed by students of Paul's remarks that while he showed an open- mindedness about almost any other subject, on the single theme of the papacy his mind remained strangely closed to analysis.

Those words were written before Humanae Vitae was issued, but they explain the letter entirely.

The commission members left their work convinced that the pope could no longer uphold a discredited teaching. When the report was leaked to the press, Catholics around the world took heart at the signs of change. So far from upsetting their faith, as the Pope feared, it heartened them. What would unsettle their faith was what Paul did next - issue Humanae Vitae, with its reiteration of Casti Connubii's ban: ('The church, calling men back to the observance of the natural law, as interpreted by its constant doctrine, teaches that each and every marriage act must remain open to the transmission of life." Catholics responded with an unparalleled refusal to submit. Polls registered an instant noncompliance with the encyclical. At a previously scheduled Catholic festival of devout young Germans at Essen, a resolution that those attending could not obey the encyclical passed through a crowd of four thousand with only ninety opposing votes. A simultaneous poll among German Catholics at large found that 68 percent of them thought the Pope was wrong on contraception. Similar findings rolled in from around the world.

What were bishops to do? The encyclical itself had ordered them to explain and enforce the Pope's decision, along with all priests:

> Be the first to give, in the exercise of your ministry, the example of loyal internal and external obedience to the teaching authority of the Church. . . it is of the utmost importance, for peace, of consciences and for the unity of the Christian People, that in the field of morals as well as in that of dogma, all should attend to the magisterium of the Church, and all should speak the same language.

But for the first time in memory, bishop's statements, while showing respect for the encyclical, told believers they could act apart from it if they felt bound by conscience to do so. The assembly of bishops in the Netherlands put it most bluntly: "The assembly considers that the encyclical's total rejection of contraceptive methods is not convincing on the basis of the arguments put forward." other Episcopal panels were more circumspect, but signaled that they would not consider those disobedient to the encyclical to be separating themselves from the sacraments. The Belgian bishops put it this way: "Someone, however, who is competent in the matter under consideration and capable

of forming a personal and well-founded judgment - which necessarily presupposes a sufficient amount of knowledge - may, after serious examination before God, come to other conclusions on certain points." ***In other words: do not treat the Pope's words lightly, but follow your conscience after taking a serious look at them. That was the position taken by bishops in the United States ("the norms of licit dissent come into play"), Austria, Brazil, Czechoslovakia, Mexico, [] West Germany, Japan, France, Scandinavia, and Switzerland***. The Scandinavian statement was typical:

> ***Should someone, however, for grave and carefully considered reasons, not feel able to subscribe to the arguments of the encyclical, he is entitled, as has been constantly acknowledged, to entertain other views than those put forward in a non-infallible declaration of the Church. No one should, therefore, on account of such diverging opinions along, be regarded as an inferior Catholic.***

The Pope was stunned. He would spend the remaining ten years of his pontificate as if sleepwalking, unable to understand what had happened to him, why such open dissent was entertained at the very top of the episcopate. Four years after the publication of *Humanae Vitae*, when the Pope looked "cautious, nervous, anxious, alarmed," he deplored the defiance of church teaching in a sermon at Saint Peter's, and this was the only explanation he could come up with for the defiance: "Through some crack in the temple of God, the smoke of Satan has entered'" He was increasingly melancholy and prone to tears. Had he opened that crack in the temple of God? Even as a nagging suspicion this was a terrible burden to bear. It explains the atmosphere of darkening tragedy that hung about his final years. He would not issue another encyclical in all those ten years. He was a prisoner of the Vatican in a way that went beyond his predecessors' confinement there. He was imprisoned in its structures of deceit. Meanwhile, Father Ford, who had assisted his fellow Jesuit Gustave Martelet in drawing up *Humanae Vitae* under Cardinal Ottaviani's direction, went back to the seminary where he had taught moral theology for years and found that the Jesuit seminarians their refused to take his classes, since they knew from others in the Order what he had done in Rome. As a result of what he considered his life's great coup, his teaching career was over.[303] (Emphasis supplied)

Intervenors even alleged that as early as 1999, "nearly 80% of Catholics believed that a person could be a good Catholic without obeying the church hierarchy's teaching on birth control."[304] They, therefore, put in issue whether the views of petitioners who are Catholics represent only a very small minority within the church.

We cannot make any judicial determination to declare the Catholic Church's position on contraceptives and sex. This is not the forum to do so and there is no present controversy—no contraceptive and no individual that has come concretely affected by the law.

This court must avoid entering into unnecessary entanglements with religion. We are apt to do this when, without proof, we assume the beliefs of one sect or group within a church as definitive of their religion. We must not assume at the outset that there might be homogeneity of belief and practice; otherwise, we contribute to the State's endorsement of various forms of fundamentalism.[305]

It is evident from the account quoted above giving the historical context of the contraceptives controversy that the Catholic church may have several perspectives and positions on the matter. If this is so, then any declaration of unconstitutionality on the basis of the perceived weaknesses in the way conscientious objectors are accommodated is premature.

VI
Family

There being no actual case or controversy, the petitions also do not provide justification for this court to declare as unconstitutional Section 23(2)(i) of the RH Law on spousal consent, and Section 7, paragraph 2 on parental consent. These provisions read:

> SEC 23. *Prohibited Acts.* – The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> x x x x
>
> (2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:
>
> (i) Spousal consent in case of married persons: Provided, That in case of disagreement, the decision of the one undergoing the procedure shall prevail; and
>
> SEC. 7. *Access to Family Planning* – x x x

> No person shall be denied information and access to family planning services, whether natural or artificial: *Provided*, That minors will not be allowed access to modern methods of family planning without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage.

Spousal Consent

According to petitioners Millennium Saint Foundation, Inc., et al., "while both play equal roles in procreation, the man or the husband is violated of his right of conjugal decisions when it is the woman's decision that will be followed whether to avail of contraceptives or not."[306]

Petitioners Couples for Christ Foundation, Inc., et al. argued that "the [reproductive health] procedure does not involve only the body of the person undergoing the procedure [as] it affects the future of the family (in terms of its size or even the presence of children) as well as the relationship between spouses."[307]

The ponencia agreed and discussed how "giving absolute authority to the spouse who would undergo a procedure, and barring the other spouse from participating in the decision would drive a wedge between the husband and wife, possibly result in bitter animosity, and endanger the marriage and the family, all for the sake of reducing the population."[308] The ponencia cited the constitutional mandate of the state to defend the "right of spouses to found a family x x x."[309]

These provisions of Republic Act No. 10354 do not threaten nor violate any right, even the right to family.

Section 23(a)(2)(i) applies to a specific situation: when there is a *disagreement* between *married* persons regarding the performance of a "legal and medically-safe reproductive health procedure."

The general rule encourages married persons to discuss and make a conjugal decision on the matter. They are caught in a problem when they disagree. This agreement may fester and cause problems within their family. The disagreement will not be created by the RH Law. It will exist factually regardless of the law. Section 23(a)(2)(i) of the law becomes available to break this deadlock and privilege the decision of the spouse undergoing the procedure.

This is logical since the reproductive health procedures involve the body, health and well being of the one undergoing the procedure.

The marriage may be a social contract but is certainly not a talisman that removes the possibility of power relationships. Married persons, especially the woman/wife, can still suffer inequality. Married persons may still experience spousal abuse.

Generally, it will be the woman who will ask to undergo reproductive health procedures. The interpretation of the majority therefore affects her control over her body. Rather than enhance the zones of autonomy of a person even in a married state, the interpretation of the majority creates the woman's body as a zone of contestation that gives the upper hand to the husband.

The majority derives the right to a family from Article XV and reads it in isolation from all the other provisions of the Constitution. In my view, these rights should be read in relation to the other provisions.

Article XV reads:

> The Family
>
> Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.
>
> Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.
>
> Section 3. The State shall defend:
>
> (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
>
> (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;
>
> (3) The right of the family to a family living wage and income; and
>
> (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

The ponencia cites *Morfe v. Mutuc*[310] on the protected zone of marital privacy. This case is not in point. It does not apply to a conflict between the spouses. It applies in declaring a zone of privacy of spouses vis-à-vis state action.

Citing *Griswold v. Connecticut,* the court said:

> The Griswold case ***invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons;*** rightfully it stressed 'a relationship lying within the zone of privacy created by several fundamental constitutional guarantees'. So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: 'The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. ***Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state.*** In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control Protection of this private sector – protection, in other words, of the dignity and integrity of the individual – has become increasingly important as modern society has developed. All the forces of a technological age – industrialization, urbanization, and organization – operate to narrow the area of privacy and facilitate intrusions into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society.'[311] (Emphasis supplied)

This is one view. It did not take into consideration the state's interest in ensuring human rights and the fundamental equality of women and men.

The right to a family should be read in relation to several provisions in the Constitution that guarantee the individual's control over her or his own person. Thus, Article III, Section 1 of the Constitution states:

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

This due process clause implies and congeals a person's right to life. This includes the individual's right to existence as well as her or his right to a quality of life of her or his choosing. The State is not to sanction a program or an act that deprives the individual of her or his control over her or his life and body. The "equal protection" clause in this provision ensures that individuals, even those that enter into a married state, do not coexist and suffer under conditions of marital inequality.

Article II elaborates on the positive obligation of the State to the right to life as embodied in the due process clause in two sections. Sections 9 and 11 provide:

> Section 9. The State ***shall promote a just and dynamic social order*** that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, ***a rising standard of living, and an improved quality of life for all.***
>
> Section 11. The State values the dignity of every human person and ***guarantees full respect for human rights.*** (Emphasis supplied)

Section 14 of the same article also improves on the goal of equality of men and women. While section 1 provides for equal protection of the laws, this section creates a positive duty on the State as follows:

> Section 14. The State recognizes the role of women in nation-building, and ***shall ensure the fundamental equality before the law of women and men.*** (Emphasis supplied)

The fundamental equality of women and men, the promotion of an improved quality of life, and the full respect for human rights do not exist when a spouse is guaranteed control the other spouse's decisions respecting the latter's body.

The autonomy and importance of family should not be privileged over the privacy and autonomy of a person. Marriage is not bondage that subordinates the humanity of each spouse. No person should be deemed to concede her or his privacy rights and autonomy upon getting married.[312]

By declaring Section 23(a)(2)(i) as unconstitutional, the majority interprets the privacy and autonomy of the family as also providing insulation of patriarchal or sexist practices from state scrutiny.[313] ***This is not what the Constitution intends.***

Parental Consent

The ponencia and the majority declared Section 7 of Republic Act No. 10354 unconstitutional for violating the right to privacy as the provision dispensed with the written parental consent for minors who are already parents or those who have had a miscarriage to access modern methods of family planning. Justice Reyes in his concurring and dissenting opinion is also of the view that Section 7 is violative of Article II, Section 12 of the Constitution on the parents' natural and primary right and duty to nurture their children.

I disagree with both the ponencia and Justice Reyes' views.

In declaring its unconstitutionality, the ponencia stated:

> Equally deplorable is the debarment of parental consent in cases where the minor, who would be undergoing a procedure, is already a parent or has had a miscarriage. x x x
>
> x x x x
>
> There can be no other interpretation of this provision except that when a minor is already a parent or has had a miscarriage, the parents are **excluded** from the decision making process of the minor with regard to family planning. Even if she is not yet emancipated, the parental authority is already cut off just because there is a need to tame population growth.
>
> x x x x
>
> To insist on a rule that interferes with the right of parents to exercise parental control over their minor-child or the right of the spouses to mutually decide on matters which very well affect the very purpose of marriage, that is, the establishment of conjugal and family life, would result in the violation of one's privacy with respect to his family. It would be dismissive of the unique and strongly-held Filipino tradition of maintaining close family ties and violative of the recognition the State affords couples entering into the special contract of marriage [that they act] as one unit in forming the foundation of the family and society.[314]

Justice Reyes, in striking down the exception to the required written parental consent for minors under Section 7, paragraph 2, also states:

> [t]here exists no substantial distinction as between a minor who is already a parent or has had a miscarriage. There is no cogent reason to require a written parental consent for a minor who seeks access to modern family planning methods and dispense with such requirement if the minor is already a parent or has had a miscarriage. Under the Family Code, all minors, generally, regardless of his/her circumstances, are still covered by the parental authority exercised by their parents. That a minor who is already a parent or has had a miscarriage does not operate to divest his/her parents of their parental authority; such circumstances do not emancipate a minor.[315]

The ponencia, however, clarified that access to information about family planning must be differentiated from access to reproductive health methods.[316] Further, it said that there must be an exception with respect to life-threatening cases. In which case, the minor's life must be safeguarded regardless of whether there is written parental consent. [317]

This provision has an exceptional application – when minors are already parents or when the minor has miscarried before. The proviso inserted by the legislature should be presumed to be based on a well-founded policy consideration with regard to the peculiar situation of minors who are already parents or those who have experienced miscarriages. As I have stressed earlier, it has been the policy of the courts in this jurisdiction to:

> x x x avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted.[318]

Rather than assume homogenous choices of family relationships on the basis of a speculative belief relating to "close family ties,"

the better part of prudence and wisdom from this Court would be to consider a more cosmopolitarian reality. There are traditional and non-traditional families. Many of these arrangements of family are the result of free human choices that go through a gamut of emotional conflicts. Teenage pregnancy, like many other life defining events, do take their toll on family. We cannot speculate —for now—as to how families will deal with these stresses. We cannot speculate on why these pregnancies happen.

Those of us who have not and can never go through the actual experience of miscarriage by a minor, those of us who cannot even imagine the pain and stresses of teenage pregnancy, should not proceed to make blanket rules on what minors could do in relation to their parents. None of us can say that in all cases, all parents can be understanding and extend sympathy for the minors that are legally under their care. None of us can say that there are instances when parents would think that the only way to prevent teenage pregnancy is a tongue lashing or corporeal punishment. We cannot understand reality only from the eyes of how we want it to be.

Only when we are faced with an actual controversy and when we see the complications of a real situation will we be able to understand and shape a narrowly tailored exception to the current rule. In the meantime, the wisdom of all the members of the House of Representative, the Senate, and the President have determined that it would be best to give the minor who is already a parent or has undergone a miscarriage all the leeway to be able to secure all the reproductive health technologies to prevent her difficulties from happening again. We must stay our hand for now.

VII
Separation of Powers

Justice del Castillo is of the view that based on our power to "promulgate rules for the protection and enforcement of constitutional rights" under Article VIII, Section 5(5) of the Constitution, we have the power to issue directives to administrative bodies as to "the proper rules" that they should promulgate in the exercise of the powers granted to them.[319]

He cites *Echegaray v. Secretary of Justice,*[320] thus:

> The 1987 *Constitution* molded an even *stronger and more independent judiciary.* Among others, *it enhanced the rule making power of this Court.* Its Section 5(5), Article VIII, provides:
>
> xxx xxx xxx
>
> "Section 5. The Supreme Court shall have the following powers:
>
> xxx xxx xxx
>
> (5) *Promulgate rules concerning the protection and enforcement of constitutional rights,* pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. *Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court*."
>
> **The rule making power of this Court was expanded**. This Court for the *first time* was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the *first time* the power to disapprove rules of procedure of special courts and quasi-judicial bodies. x x x[321]

He believes that we have the power to approve or modify such rules or require them to issue rules for the protection of constitutional rights. He states:

> Viewed in light of the broad power of the Court to issue rules for the protection and enforcement of constitutional rights, the power to disapprove the rules of procedure of quasi-judicial bodies is significant in that it implies the power of the Court to look into the sufficiency of such rules of procedure insofar as they adequately protect and enforce constitutional right. **Moreover, the power to disapprove the aforesaid rules of procedure necessarily includes or implies the power to approve or modify such rules or, on the one extreme, require that such rules of procedure be issued when necessary to protect and enforce constitutional rights. In other words, within and between the broader power to issue rules for the protection and enforcement of constitutional rights and the narrower power to disapprove the rules of procedure of quasi-judicial bodies, there exists penumbras of the power that the Court may exercise in order to protect and enforce constitutional rights.**
>
> x x x x

> Taken together [with Article VIII, Section 1 of the Constitution], the expanded jurisdiction of the Court and the power to issue rules for the protection and enforcement of constitutional rights provide the bases for the Court (1) to look into the sufficiency of safeguards in the implementation of the RH Law insofar as it will adversely affect the right to life of the unborn, and (2) to issue such orders as are necessary and essential in order to protect and enforce the constitutional right to life of the unborn. x x x[322] (Emphasis supplied)

For this reason, it is suggested that "x x x the Court x x x issue an order:

> (1) directing the FDA to formulate the rules of procedure in the screening, evaluation and approval of all contraceptives that will be used under the RH Law;
> (2) the rules of procedure shall contain the following minimum requirements of due process:
> (a) publication, notice and hearing,
> (b) the Solicitor General shall be mandated to represent the unborn and the State's interest in the protection of the life of the unborn,
> (c) interested parties shall be allowed to intervene,
> (d) the standard laid down in the Constitution, as adopted under the RH Law, as to what constitute allowable contraceptives shall be strictly followed, i.e., those which do not harm or destroy the life of the unborn from conception/fertilization,
> (e) in weighing the evidence, all reasonable doubts shall be resolved in favour of the right to life of the unborn from conception/fertilization, and
> (f) the other requirements of administrative due process, as summarized in Ang Tibay, shall be complied with.
>
> The FDA should be directed to submit these rules of procedure within 30 days from receipt of the Court's decision, for the Court's appropriate action.[323]

The issue in *Echegaray* was whether the Supreme Court has jurisdiction to control the execution and enforcement of its judgment. The discussion on the expanded powers of the Supreme Court in Section 5(5) of Article VIII of the Constitution was made in this context. It is not to be taken as justification for the Court to usurp powers vested upon other departments. Thus, after this Court in that case said that "[t]he Court was x x x granted for the *first time* the power to disapprove rules of procedure of special courts and quasi-judicial bodies[,]" it continued with the statement:

> x x x *But most importantly, the 1987 Constitution took away the power of the Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure.* In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with the Congress, more so with the Executive. **If the manifest intent of the 1987 Constitution is to strengthen the independence of the judiciary, it is inutile to urge, as public respondents do, that this Court has no jurisdiction to control the process of execution of its decisions, a power conceded to it and which it has exercised since time immemorial.**
>
> **To be sure, it is *too late in the day* for public respondents to assail the jurisdiction of this Court to control and supervise the implementation of its decision in the case at bar. x x x**[324] (Emphasis supplied)

This court's power to "promulgate rules for the protection and enforcement of constitutional rights" as stated in Article VIII, Section 5(5) of the Constitution must be harmonized with the rest of the provision, which provides:

> Section 5. The Supreme Court shall have the following powers:
>
> x x x x
>
> 5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. **Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.** Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (Emphasis supplied)

The court's power to issue rules, including rules concerning the protection and enforcement of constitutional rights, is limited to judicial procedures. We do not have competence to compel the issuance of administrative procedures. Rules of procedure of quasi-judicial bodies can only be disapproved by the Supreme Court, but not issued, modified or approved by it.

The Constitution vests the executive power upon the President. He or she, and not the judiciary, exercises the power of control

over all executive departments, bureaus and offices,[325] including the Food and Drug Administration. The judiciary has no administrative power of control or supervision over the Food and Drug Administration.

Insisting that we can impose, modify or alter rules of the Food and Drug Administration is usurpation of the executive power of control over administrative agencies. It is a violation of the principle of separation of powers, which recognizes that "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere."[326] The system of checks and balances only allows us to declare, in the exercise of our judicial powers, the Food and Drugs Administration's acts as violative of the law or as committed with grave abuse of discretion.[327] Such power is further limited by the requirement of actual case or controversy.[328]

FINAL NOTE

It is not the Supreme Court alone that can give the full substantive meaning of the provisions of the Constitution. The rules that aid in reshaping social reality as a result of the invocation and interpretation of constitutional provisions should be the product of the interrelationship of all constitutional organs.

This case presents us with an opportunity to clearly define our role. We have the power to declare the meanings of constitutional text with finality. That does not necessarily mean that we do not build on the experience of the other departments and organs of government. We are part of the constitutional design that assures that the sovereign people's will is vetted in many ways. Deference to the outcome in legislative and executive forums when there is no "actual case or controversy" is also our constitutional duty.

Judicial deference implies that we accept that constitutional role that assures democratic deliberation to happen in political forums. It proceeds from an understanding that even as we labor and strive for wisdom, we will never be the repository of all of it. Our status as members of this court is likewise no blanket license to impose our individual predilections and preferences. Contrary to an esteemed colleague, our privileges do not include such judicial license.

The judicial temperament is one that accepts that wisdom is better achieved by the collective interaction of the constitutional bodies. We have no unbounded license to simply act when we want to. That judicial temperament ensures the Rule of Law.

The President approved the Responsible Parenthood and Reproductive Health Act of 2012 or Republic Act No. 10354 on December 21, 2012. It now defines the political consensus within Congress and with the President. The law took five (5) Congresses or not less than thirteen (13) years to complete.[329] Plenary debates in both the House of Representatives and in the Senate were covered live by public television.

Whole communities were riveted by the debates. Newspaper columnists weighed in with their ideas. Public forums were filled with heated discussion on the merits and demerits of every provision. Catholic pulpits were used to express opinion. Various forms of democratic deliberation and debate translated to political positions of legislators. Many of these positions were informed by their interpretation of the Constitution and the needs of their communities. This, in turn, formed into the present provisions of this law.

The petitioners come to us after having lost the majority in full democratic deliberation in the halls of Congress. They ask us to read the provisions of the law and the implementing rules. Without the benefit of an actual controversy regarding conflicting rights arising from real facts, they ask us to declare various provisions formulated by the legislature as unconstitutional. In effect, they ask us to continue to reshape the political consensus. In effect, they ask us to render an advisory opinion, and on that basis, refine the law.

This is not what we do.

Courts act on conflict of rights arising from actual facts and events. We do not resolve moral, philosophical or even legal issues barren of facts.

Unwanted pregnancies may result in clinical complications and deaths of women during childbirth,[330] of the fetus while inside the womb[331] and of infants soon after they are born.[332] Unwanted pregnancies may be the result of lack of knowledge of the consequences of the sexual act, or it could be due to the lack of information and access to safe and effective reproductive technologies. The law impliedly accepts that the choice of intimate relationships is better left to the individual and the influences of their culture, their family, and their faiths.

The law acknowledges the differential impact of lack of knowledge and access to reproductive health technologies between the rich and the poor.[333] It, therefore, requires that proper information and access be made more available to those who need it. It mandates the government to intervene at least in order to provide the right information and, when requested and without coercion, provide access.

The law assumes that informed choices provide greater chances for a better quality of life for families. The law actively intervenes so that government itself can provide these choices so that the quality of life improves. More than corporeal existence,

it hopes to assure human dignity.

I dissent from the majority's position that we can review the law. I dissent more vigorously from the majority's ruling that some provisions are declared unconstitutional on the basis of speculative facts. In my view, this law needs to be fully implemented.

Petitioners have come before us driven by their unfailing belief in the moral rightness of their faith and their causes. Their faith is not to be questioned. Their conviction is solid. But these cases are premature.

But, they are not the only ones who may be affected. They cannot speak for everyone.

There are many burdened mothers who can barely feed their children.

There are mothers who have had to undergo abortion whether intended or unintended because of the unavailability of information and access to contraception should they have had the right information.

There are mothers who died at childbirth because their pregnancy or their poverty was not their choice.

There are impoverished mothers and fathers who helplessly bore the deaths of their children.

They cannot speak. Because of the dominant morality that surround them, many choose not to speak.

All bear their own unspeakable reality. This law may just be the hope that they deserve.

ACCORDINGLY, I vote to DISMISS these petitions. This law, in my view, gives them a chance. It should be implemented in full.

---

[1] See P. A. Freund, Mr. Justice Brandeis, in On Law and Justice 119, 140 (1968) and A. M. Bickel, THE LEAST DANGEROUS BRANCH 71 (1962), as cited by V. V. Mendoza, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS: CASES AND MATERIALS 91 (2004).

[2] See *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* G.R. No. 178552, October 5, 2010, 632 SCRA 146, 166 [Per J. Carpio-Morales, En Banc].

[3] See *Angara v. Electoral Commission,* 63 Phil. 139, 158 (1936) [Per J. Laurel, En Banc]; See also *Sec. Guingona, Jr. v. Court of Appeals,* 354 Phil. 415, 429 (1998) [Per J. Panganiban, First Division].

[4] See the separate opinion of J. Mendoza in *Cruz v. Sec. of Environment and Natural Resources*, 400 Phil. 904, 1092 (2002) [Per Curiam, En Banc]; See the concurring opinion of J. Mendoza in *Estrada v. Sandiganbayan*, 421 Phil. 290, 430-432 (2001) [Per J. Bellosillo, En Banc], citing *Gooding v. Wilson*, 405 U.S. 518, 521, 31 L.Ed.2d 408, 413 (1972); *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* G.R. No. 178552, October 5, 2010, 632 SCRA 146 [Per J. Carpio-Morales, En Banc].

[5] Imbong et al. petition, *rollo* (G.R. No. 204819), vol. 1, p. 5; Serve Life CDO Inc. petition, *rollo* (G.R. No. 204988), vol. 1, p.8.

[6] Task Force for Family and Life petition, *rollo* (G.R. No. 204957), vol. 1, p. 6.

[7] Alliance for the Family Foundation petition, *rollo* (G.R. No. 204934), vol. 1, p. 9; Tatad et al., petition, rollo (G.R. No. 205491), vol. p. 4.

[8] De Venecia et al., comment-in-intervention, *rollo* (G.R. No. 205491), vol. 1, p. 370; C4RH motion to intervene, *rollo* (G.R. no. 204934), vol. 1, p.849.

[9] *See for example* petitions in G.R. No. 204988 by Serve Life CDO, Inc., et al.; G.R. No. 205003 by Expedito A. Bugarin; G.R. No. 205491 by Francisco Tatad et al.; G.R. No. 205720 by Pro-Life Philippines Foundation, Inc.; and G.R. No. 205355 by Millennium Saint Foundation, Inc. et al.

[10] *People v. Vera,* 65 Phil. 56 (1937).

[11] Id.

[12] Republic Act No. 10354, Sections 2(d), 3(d), 3(e), 3(j).

[13] *See* J. Carpio's concurring opinion, p. 3.

[14] *See* 1986 Records of the Constitutional Commission No. 32, Vol. 1, July 17, 1986; No. 81, Vol. IV, September 12, 1986; No. 84, Vol. IV, September 16, 1986; No. 85, Vol. IV, September 17, 1986; No. 87, Vol. IV, September 19, 1986.

[15] *E.g.* That the beginning of life is already settled in the medical community; That a chromosome count of 46 can only be found in humans; That the situations when moral dilemma exists are few.

[16] (Ectopic pregnancy occurs when the fertilized egg implants into parts or organs other than the uterus.) See The American College of Obstetricians and Gynecologiests, Frequently Asked Questions, FAQ155: Pregnancy, http://www.acog.org/~/media/For%20Patients/faq155.pdf?dmc=1&ts=20140323T2143090835 accessed on March 24, 2014; See Obstetrics and Gynecology by Charls RB Beckman, et al. 7th ed. Published by Wolters Kluwer, accessed through https://www.inkling.com/read/obstetrics-gynecology-beckmann-7th/chapter-19/ectopic-pregnancy on March 27, 2014; See In Vitro Fertilization: The A.R.T.* of Making Babies (*Assisted Reproductive Technology) by Sher Geoffrey, et al. Skyhouse Publishing 4th Ed. 2013, Chapter 2, p. 33.

[17] E.g. pre-eclampsia, seizures, liver or kidney complications.

[18] (Assisted reproductive technologies (ART) refer to "all fertility treatments in which both eggs and sperm are handles. In general, ART procedures involve surgically removing eggs from a woman's ovaries, combining them with sperm in the laboratory, and returning them to the woman's body or donating them to another woman. They do NOT include treatments in which only sperm are handled (i.e. intrauterine—or artificial—insemination) or procedures in which a woman takes medicine only to stimulate egg production without the intention of having eggs retrieved.") See Center for Disease Control and Prevention, What is Assisted Reproductive Technology (visited March 24, 2014).

[19] *See* E. Peñalver, *The Concept of Religion*, 107 Yale L.J. 791, 803 (1997).

[20] *See* De Venecia et al. comment-in-intervention, *rollo* (G.R. No. 205491), vol. 1, p. 375-376 citing G. Wills, PAPAL SIN: STRUCTURES OF DECEIT (2001).

[21] *See* Declaration of Geneva (1948). Adopted by the General Assembly of World Medical Association at Geneva Switzerland, September 1948. (The Philippine Medical Association is a member of the World Medical Association.) (visited April 4, 2014); See also Hippocratic Oath, available at (visited April 4, 2014).

[22] Republic Act No. 10354, Section 23 (a)(2)(i).

[23] Ponencia, pp. 76-81.

[24] Constitution, Article II, section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

[25] See Office of the Solicitor General, consolidated comment, *rollo* (G.R. No. 205491), vol. 1, pp. 153 and 158.

[26] *Angara v. Electoral Commission,* 63 Phil. 139, 158 (1936) [Per J. Laurel, En Banc]. See also *Dumlao v. Commission on Elections,* 184 Phil. 369, 377 (1980) [Per J. Melencio-Herrera, En Banc], where this court held that "[i]t is basic that the power of judicial review is limited to the determination of actual cases and controversies."

[27] Ponencia, p. 28.

[28] Id.

[29] *Joya v. Presidential Commission on Good Government,* G.R. No. 96541, August 24, 1993, 225 SCRA 568, 579 [Per J. Bellosillo, En Banc]; See also *Republic Telecommunications Holdings, Inc. v. Santiago*, 556 Phil. 83, 91-92 (2007) [Per J. Tinga, Second Division].

[30] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[31] See V. V. MENDOZA, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS: CASES AND MATERIALS 87 (2004).

[32] G.R. No. 183591, October 14, 2008, 568 SCRA 402 [Per J. Carpio-Morales, En Banc].

[33] Id. at 443-449.

[34] Id. at 450.

[35] Id. at 518.

[36] Ponencia, p. 28.

[37] *See* CONSTITUTION, Article VIII, section 1.

[38] See *Sana v. Career Executive Service Board,* G.R. No. 192926, November 15, 2011, 660 SCRA 130, 138 [Per J. Carpio, En Banc] where the ponencia dismissed the petition for being moot and academic and characterized the North Cotabato case as an instance where this court relaxed the actual case or controversy requirement to review moot and academic issues.

[39] 602 Phil. 64 (2009) [Per J. Brion, En Banc].

[40] Section 19. *Start of Full Deregulation.* – Full deregulation of the Industry shall start five (5) months following the effectivity of this Act: Provided, however, That when the public interest so requires, the President may accelerate the start of full deregulation upon the recommendation of the DOE and the Department of Finance when the prices of crude oil and petroleum products in the world market are declining and the value of the peso in relation to the US dollar is stable, taking into account the relevant trends and prospects: Provided, further, That the foregoing provisions notwithstanding, the five (5)-month Transition Phase shall continue to apply to LPG, regular gasoline, and kerosene as socially-sensitive petroleum products and said petroleum products shall be covered by the automatic pricing mechanism during the said period.

Upon the implementation of full deregulation as provided herein, the Transition Phase is deemed terminated and the following laws are repealed:

(a) Republic Act No. 6173, as amended;
(b) Section 5 of Executive Order No. 172, as amended;
(c) Letter of Instruction No. 1431, dated October 15, 1984;
(d) Letter of Instruction No. 1441, dated November 15, 1984;
(e) Letter of Instruction No. 1460, dated May 9, 1985;
(f) Presidential Decree No. 1889; and
(g) Presidential Decree No. 1956, as amended by Executive Order No. 137:

Provided, however, That in case full deregulation is started by the President in exercise of the authority provided in this Section, the foregoing laws shall continue to be in force and effect with respect to LPG, regular gasoline and kerosene for the rest of the five (5)-month period.

[41] *Garcia v. The Executive Secretary,* 602 Phil. 64, 75-76 (2009) [Per J. Brion, En Banc].

[42] 607 Phil. 334 (2009) [Per C. J. Puno, En Banc].

[43] Id. at 341. This court likewise denied the petitions for failing to present an actual case or controversy.

[44] G.R. No. 178552, October 5, 2010, 632 SCRA 146 [Per J. Carpio-Morales, En Banc] citing *Information Technology Foundation of the Philippines v. COMELEC,* 499 Phil. 281, 304-305 (2005) [Per J. Panganiban, En Banc].

[45] Id. at 175-177.

[46] G.R. No. 186613, August 27, 2013, 703 SCRA 623 [Per J. Perez, En Banc].

[47] Id. at 641-643.

[48] *See Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387 (2008) [Per J. Carpio-Morales, En Banc], dissenting opinions of J. Velasco, Jr., and J. Nachura. *See also* separate opinions of J. Tinga and Chico-Nazario; See also J. Brion's concurring and dissenting opinion and J. Leonardo-de Castro's separate concurring and dissenting opinion.

[49] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387, 646-647 (2008) [Per J. Carpio-Morales, En Banc].

[50] Id. at 706-707.

[51] Id. at 685-688.

[52] CONSTITUTION, Article VIII, section 1, paragraph 2. See Angara v. Electoral Commission, 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

[53] *See* V. V. MENDOZA, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS: CASES AND MATERIALS 86 (2004).

[54] *Belgica, et al. v. Executive Secretary,* G.R. No. 208566, November 11, 2013 [Per J. Perlas-Bernabe, En Banc].

[55] *Belgica, et al. v. Executive Secretary,* G.R. No. 208566, November 11, 2013, J. Leonen's concurring opinion, pp. 6-7. This case, however, falls under the exception of the actual case requirement due to jurisprudential precedent of patent irregularity of disbursements and a clear, widespread, and pervasive wastage of funds by another branch of government.

[56] SEC. 9. The Philippine National Drug Formulary System and Family Planning Supplies. – The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.

These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: *Provided, further,* That the foregoing offices shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent.

[57] Ponencia, p. 55.

[58] SEC. 14. Age- and Development-Appropriate Reproductive Health Education. – The State shall provide age- and development-appropriate reproductive health education to adolescents which shall be taught by adequately trained teachers informal and nonformal educational system and integrated in relevant subjects such as, but not limited to, values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood: Provided, That flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents-teachers-community associations, school officials and other interest groups. The Department of Education (DepED) shall formulate a curriculum which shall be used by public schools and may be adopted by private schools.

[59] Ponencia, pp. 81-82.

[60] Ponencia, p. 29.

[61] G.R. No. 203335, February 18, 2014 [Per J. Abad, En Banc].

[62] J. Leonen, dissenting and concurring opinion, p. 32, G.R. No. 203335, February 18, 2014 [Per J. Abad, En Banc].

[63] 400 Phil. 904, (2002) [Per Curiam, En Banc].

[64] Id. at 1092. J. Mendoza's separate opinion.

[65] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

[66] *See* the concurring opinion of J. Mendoza in *Estrada v. Sandiganbayan,* 421 Phil. 290, 430-431 (2001) [Per J. Bellosillo, En Banc], citing *Gooding v. Wilson,* 405 U.S. 518, 521, 31 L.Ed.2d 408, 413 (1972); *United States v. Salerno,* 481 U.S. 739, 745, 95 L.Ed.2d 697, 707 (1987); *People v. Dela Piedra,* 403 Phil. 31 (2001) [Per J. Kapunan, First Division]*; Broadrick v. Oklahoma,* 413 U.S. 601, 612-613, 37 L. Ed. 2d 830, 840-841 (1973); *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 494-95, 71 L.Ed.2d 362, 369 (1982); *United States v. Raines,* 362 U.S. 17, 21, 4 L.Ed.2d 524, 529 (1960); *Yazoo & Mississippi Valley RR. v. Jackson Vinegar Co.,* 226 U.S. 217, 57 L.Ed. 193 (1912).

[67] 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[68] Id. at 775-777, citing the concurring opinion of J. Mendoza in *Estrada v. Sandiganbayan,* 421 Phil. 290, 430-432 (2001) [Per J. Bellosillo, En Banc]; *Broadrick v. Oklahoma,* 413 U.S. 601 (1973); *Younger v. Harris,* 401 U.S. 37, 52-53, 27 L.Ed.2d 669, 680 (1971); *United States v. Raines,* 362 U.S. 17, 4 L.Ed.2d 524 (1960); *Board of Trustees, State Univ. of N.Y v. Fox,* 492 U.S. 469, 106 L.Ed.2d 388 (1989).

[69] 479 Phil. 265 (2004) [Per J. Panganiban, En Banc].

[70] 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc].

[71] 594 Phil. 305 (2008) [Per J. Chico-Nazario, En Banc].

[72] Id at 316.

[73] G.R. No. 178552, October 5, 2010, 632 SCRA 146 [Per J. Carpio-Morales, En Banc].

[74] Id. at 186-187, *citing Prof. David v. Pres. Macapagal-Arroyo,* 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc]; *Spouses Romualdez v. Commission on Elections,* 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc]; *Estrada v. Sandiganbayan,* 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc]; Constitution, Article III, section 4; *People v. Siton,* 600 SCRA 476, 485 (2009) [Per J. Ynares-Santiago, En Banc]; *Virginia v. Hicks,* 539 U.S. 113, 156 L. Ed. 2d 148 (2003); *Gooding v. Wilson,* 405 U.S. 518, 31 L. Ed 2d 408 (1972).

[75] J. Leonen, dissenting and concurring opinion, p. 38*, Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014 [Per J. Abad, En Banc].

[76] Id.

[77] Rules of Court, rule 3, section 12, which provides: "Class Suit. - When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest."

[78] Rules of Court, rule 3, section 12.

[79] G.R. No. 4695, 12 Phil. 227 (1908) [Per J. Willard, En Banc].

[80] Id.

[81] Id. at 240-241.

[82] 157 Phil. 551 (1974) [Per J. Zaldivar, Second Division].

[83] Id. at 564-569, citing *Niembra v. The Director of Lands,* 120 Phil. 509 (1964) [Per J. Labrador, En Banc].

[84] A. M. No. 88-1-646-0, March 3, 1988, 159 SCRA 623 [En Banc, Unsigned Resolution].

[85] Id. at 623.

[86] Rules of Court, rule 3, section 12.

[87] Rules of Court, rule 3, section 6.

[88] A. M. No. 88-1-646-0, March 3, 1988, 159 SCRA 623, 623 [En Banc, Unsigned Resolution].

[89] Id. at 630.

[90] Id. at 627, 629-630.

[91] *Bulig-bulig Kita Kamaganak Association v. Sulpicio Lines, Inc.* G.R. No. 84750, May 19, 1989, 173 SCRA 514 [En Banc, Unsigned Resolution].

[92] Id. at 515.

[93] *See for example Francisco Jr. v. The House of Representatives*, 460 Phil. 830 (2003). (This case discussed that "[w]here it clearly appears that not all interests can be sufficiently represented as shown by the divergent issues raised in the numerous petitions before this Court, G.R. No. 160365 as a class suit ought to fail.")

[94] 444 Phil 230 (2004) [Per J. Bellosillo, En Banc].

[95] Id. at 257-258. Justice Mendoza concurred in the result. Justices Carpio and Austria-Martinez dissented. Justices Panganiban and Carpio-Morales joined Justice Carpio, while Justice Azcuna joined Justice Austria Martinez. Citations omitted.

[96] Petition docketed as G.R. No. 204819.

[97] Imbong, et al. petition, *rollo* (G.R. No. 204819), vol. 1, p. 5.

[98] Id.

[99] Petition docketed as G.R. No. 20934.

[100] Alliance for the Family Foundation, Inc. petition, *rollo* (G.R. No. 20934), vol. 1, p. 9.

[101] G.R. No. 101083, July 30, 1993, 224 SCRA 792 [Per J. Davide, Jr., En Banc].

[102] Id. at 802-803.

[103] Petition docketed as G.R. No. 204957.

[104] Task Force for Family and Life Visayas, Inc. amended petition, *rollo* (G.R. No. 204957), pp. 44-45.

[105] Id. at 45.

[106] Id.

[107] Petition docketed as G.R. No. 204988.

[108] Serve Life CDO Inc. petition, *rollo* (G.R. No. 204988), p. 8.

[109] Id.

[110] Petition docketed as G.R. No. 205491.

[111] Tatad et al. petition, *rollo* (G.R. No. 205491), vol. 1, p. 4.

[112] Petition docketed as G.R. No. 207172.

[113] Couples for Christ petition, *rollo* (G.R. No. 207172), vol. 1,, p. 11.

[114] Petition docketed as G.R. No. 205720.

[115] Pro-Life Philippines Foundation et al. petition, *rollo* (G.R. No. 205720), vol. 1, p. 5.

[116] Id.

[117] G.R. No. 204988 by Serve Life CDO, Inc., et al.; G.R. No. 205003 by Expedito A. Bugarin; G.R. No. 205491 by Francisco Tatad et al.; G.R. No. 205720 by Pro-Life Philippines Foundation, Inc.; and G.R. No. 205355 by Millennium Saint Foundation, Inc., et al.

[118] *David v. Macapagal-Arroyo,* 522 Phil. 705, 763-764 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[119] *See* J. Leonen concurring opinion in *Belgica, et al. v. Executive Secretary,* G.R. No. 208566, November 11, 2013 [Per J. Perlas-Bernabe, En Banc].

[120] Constitution, Article XI, section 2.

[121] *See Estrada v. Desierto,* 408 Phil. 194 (2001) [Per J. Puno, En Banc], cited in Rodriguez v. Macapagal-Arroyo, G.R. No. 191805, November 15, 2011, 660 SCRA 84. *See* also J. Leonen concurring opinion in *Belgica, et al. v. Executive Secretary,* G.R. No. 208566, November 11, 2013 [Per J. Perlas-Bernabe, En Banc].

[122] Declaration of policy.

[123] Guiding Principles of Implementation.

[124] The Philippine National Drug Formulary System and Family Planning Supplies.

[125] Ponencia, p. 48.

[126] Id.

[127] Id.

[128] G.R. No. 83896, February 22, 1991, 194 SCRA 317, [En Banc, per Fernando, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Medialdea, Regalado and Davide, Jr., JJ., concur; Paras, J., x x x concur because cabinet members like the members of the Supreme Court are not supermen; Sarmiento and Grino-Aquino, JJ., No part].

[129] Id. at 325.

[130] Id. at 337-338.

[131] Id.

[132] CONSTITUTION, Article II, section 1.

[133] (The right to life provision in Article II, Section 12 of the Constitution was initially intended to be part of Section 1 of the Bill of Rights, such that the provision reads: Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. The right to life extends to the fertilized ovum.) See RCC NO. 32, Vol. 1, July 17, 1986.

[134] (Final provision is changed to “from conception.”)

[135] RCC No. 32, Vol. 1, July 17, 1986.

[136] Id.

[137] Id.

[138] RCC No. 32, Vol. 1, July 17, 1986.

* Corrected. Earlier version had an erratum.

[139] RCC No. 85, Vol. 4, September 17, 1986.

[140] Id.

[141] C. Cameron and R. Williamson, In the world of Dolly, when does a human embryo acquire respect? J Med Ethics 31, 215–220, 220 (2005)

[142] JM Goldenring, The brain-life theory: towards a consistent biological definition of humanness, Journal of medical ethics, 11, 198-204 (1985).

[143] Id.

[144] *See* MC Shea, Embryonic life and human life, Journal of medical ethics, 11, 205-209 (1985)

[145] Id.

[146] See D. DeGrazia, Human Identity and Bioethics, (2005).

[147] RCC No. 32, Vol. 1, July 17, 1986,

[148] RCC No. 32, Vol. 1, July 17, 1986,

[149] RCC No. 32, Vol. 1, July 17, 1986,

[150] RCC No. 32, Vol. 1, July 17, 1986,

[151] RCC No. 32, Vol. 1, July 17, 1986.

[152] RCC No. 32, Vol. 1, July 17, 1986.

[153] RCC No. 32, Vol. 1, July 17, 1986.

[154] RCC No. 32, Vol. 1, July 17, 1986.

[155] *See* C. Cameron and R. Williamson, In the world of Dolly, when does a human embryo acquire respect? J Med Ethics 31, 215–220 (2005).

[156] Id.

[157] Id.

[158] Id.; *See* also (visited March 29, 2014).

[159] *See* C. Cameron and R. Williamson, *In the world of Dolly, when does a human embryo acquire respect?* J MED ETHICS 31, 215–220, 216 (2005), citing Uren WJ. How is it right to treat the human embryo? The embryo and stem cell research. PACIFICA, 2003; 16:No 2:2.

[160] *See* (visited March 29, 2014).

[161] *See* (visited March 29, 2014); (visited March 29, 2014); (visited March 29, 2014).

[162] *See* C. Cameron and R. Williamson, In the world of Dolly, when does a human embryo acquire respect? J Med Ethics 31, 215–220, 216 (2005).

[163] Id.

[164] RCC No. 32, Vol. 1, July 17, 1986.

[165] Id.

[166] G. Benagiano, Giuseppe, et al.,
Fate of fertilized human oocytes, Reproductive, BIOMEDICINE ONLINE, 21(6), 732-741 (2010).

[167] *See* N. Macklon, NS., et al., *Conception to ongoing pregnancy: the 'black box' of early pregnancy loss.* HUMAN REPRODUCTION UPDATE. 8(4), 333-343 (2002).

[168] RCC No. 81, Vol. IV, September 12, 1986.

[169] Id.

[170] N. Manish, APPROACH TO PRACTICAL PEDIATRICS 303 (2011); (visited March 28, 2014).

[171] *See* L. Crowley, AN INTRODUCTION TO HUMAN DISEASE: PATHOLOGY AND PATHOPHYSIOLOGY CORRELATIONS 169 (2013); (visited March 28, 2014).

[172] *See* R. Goss, DEER ANTLERS, REGENERATION, FUNCTION AND EVOLUTION, 46 (1983); G. Feldhamer and W. McShea, DEER: THE ANIMAL ANSWER GUIDE, 4 (2012).

[173] RCC No. 85, Vol. IV, September 17, 1986.

[174] K. Edmonds (ed.), DEWHURST'S TEXTBOOK OF OBSTETRICS AND GYNAECOLOGY, 76-87, (8th ed.).

[175] Id. at 101.

[176] Id. at 105.

[177] Id. at 107-108.

[178] Id. at 105-109.

[179] See http://www.cancer.gov/ncicancerbulletin/112911/page6> (visited March 28, 2014).

[180] See (visited March 29, 2014).

[181] RCC No. 84, Vol. IV, September 16, 1986.

[182] See Article 7 Summa Theologiae on Whether it is Lawful to kill a man in self-defense, (visited March 29, 2014); See also R. Hull, Deconstructing the Doctrine of Double Effect, June 2000, Ethical Theory & Moral Practice; June 2000, Vol. 3 Issue 2, p. 195 (visited March 29, 2014).

[183] R. Hull, Deconstructing the Doctrine of Double Effect, June 2000, Ethical Theory & Moral Practice; June 2000, Vol. 3 Issue 2, p. 195 (visited March 29, 2014).

[184] Vol. IV, September 16, 1986, RCC No. 84.

[185] Dr. R. Virola, Statistics on Violence Against Women and Children: A Morally Rejuvenating Philippine Society? (visited March 29, 2014); Dr. R. Virola, Abused Children, (visited March 29, 2014).

[186] Dr. R. Virola, Abused Children, (visited March 29, 2014).

[187] 2008 National Demographic and Health Survey, accessed from Demographic and Health Surveys Program, website at on April 3, 2014. P. 90-91.

[188] *See* for example Alliance for the Family Foundation, et al., rollo, vol. 1, pp. 1278-1291.

[189] *See* Joint Memorandum of House of Representatives and respondent-intervenor Edcel Lagman, *rollo* (G.R. no. 204819), vol. 3, pp. 2330-2333..; Memorandum of respondents-intervenors Filipino Catholic Voices for Reproductive Health, et al., *rollo,* (G.R. No. 204819), vol. 3, p. 2255.

[190] A. Vander, et al. HUMAN PHYSIOLOGY: THE MECHANISMS OF BODY FUNCTION 664 (8th Ed. 2001).

[191] Id. at 664-665; *See* S. Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 32 (4th Ed. 2013).

[192] A. Vander, et al. Human Physiology: THE MECHANISMS OF BODY FUNCTION 664 (8th Ed. 2001)

[193] Id. at 663.

[194] Id; See also Human Reproduction: Anatomy and Physiology, Marquette University Website (visitedMarch 27, 2014).

[195] See Vander at 663; *See review of literature in* S. Pallone and G. Bergus, *Fertility Awareness-Based Methods: Another Option for Family Planning,* J.Am.Board Fam. Med., 22(2):147-157 (2001); See S. Geoffrey, et al., IN VITRO FERTILIZATION: The A.R.T.* of Making Babies (*ASSISTED REPRODUCTIVE TECHNOLOGY) 30 (4th ed. 2013; See also Human Reproduction: Anatomy and Physiology, Marquette University Website (visitedMarch 27, 2014); *See also* C. Thibault, Physiology and physiopathology of the fallopian tube by, (visited March 27, 2014).

[196] A. Vander, et al. HUMAN PHYSIOLOGY: THE MECHANISMS OF BODY FUNCTION 663 (8th Ed. 2001).

[197] Id. at 665; *See* S. Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 34-35 (4th Ed. 2013).

[198] *See* Vander, at 665.

[199] Id; *See* S. Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 32-33 (4th Ed. 2013).

[200] *See* Vander at 665.

[201] Id.

[202] Id. 665.

[203] *See* C. Beckman, et al., OBSTETRICS AND GYNECOLOGY (7th ed.), available at

(visited on March 27, 2014).

[204] See Vander at 669.

[205] Id at 677.

[206] Id.

[207] See N. Macklon, NS., et al., Conception to ongoing pregnancy: *the 'black box' of early pregnancy loss,* HUMAN REPRODUCTION UPDATE. 8(4), 333-343 (2002). *See also* G. Benagiano, Giuseppe, et al., *Fate of fertilized human oocytes, Reproductive*, BIOMEDICINE ONLINE, 21(6), 732-742 (2010); S. Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 39 (4th Ed. 2013).

[208] Id.

[209] *See* N. Macklon, NS., et al., *Conception to ongoing pregnancy: the 'black box' of early pregnancy loss.* HUMAN REPRODUCTION UPDATE. 8(4), 333, 337 (2002).*citing* Boue et al 1975 and Eiben, et al. 1987.

[210] Id. at 334.

[211] G. Benagiano, Giuseppe, et al., *Fate of fertilized human oocytes, Reproductive*, BIOMEDICINE ONLINE, 21(6), 732-742 (2010); *See also* Id. at 333-343.

[212] Id; *See* S. Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 39 (4th Ed. 2013).

[213] *See* G. Benagiano, Giuseppe, et al., *Fate of fertilized human oocytes, Reproductive,* BIOMEDICINE ONLINE, 21(6), 732-742 (2010); See N. Macklon, NS., et al., *Conception to ongoing pregnancy: the 'black box' of early pregnancy loss*. HUMAN REPRODUCTION UPDATE. 8(4), 333, 335 (2002).

[214] Id.

[215] *See* Vander at 669.

[216] Id. at 668-669.

[217] *See* Joint Memorandum of House of Representatives and respondent-intervenor, Lagman, rollo (G.R. No. 204819), vol. 3, pp. 2330-2333.

[218] See K. Grens, When does pregnancy begin? Doctors disagree, November 17, 2011, (visited March 25, 2014); *See for example* E. Foley, THE LAW OF LIFE AND DEATH BY ELIZABETH PRICE FOLEY 59(2011) President and Fellows of Harvard College; *See* Vander at 677.

[219] D. DeGrazia, HUMAN IDENTITY AND BIOETHICS, DAVID DEGRAZIA, 246 (2005).

[220] Id.

[221] Id. 247.

[222] Id.

[223] Id. at 248.

[224] Id. at 248.

[225] Id.

[226] *See* Id. at 249.

[227] Id.

[228] Id. at 250-251.

[229] Id.

[230] See Id. at 246-252.

[231] Id. at 252.

[232] Id.

[233] Id. at 252.

[234] Id. at 253.

[235] The American College of OBSTETRICIANS AND GYNECOLOGIESTS, Frequently Asked Questions, FAQ155: Pregnancy, available at (visited on March 24, 2014); See C. Beckman, et al., OBSTETRICS AND GYNECOLOGY (7th ed.), available at < https://www.inkling.com/read/obstetrics-gynecology-beckmann-7th/chapter-19/ectopic-pregnancy> (visited on March 27, 2014); *See S.* Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 33 (4th Ed. 2013).

[236] The American College of Obstetricians and Gynecologiests, Frequently Asked Questions, FAQ155: Pregnancy, available at (visitedon March 24, 2014); See C. Beckman, et al., OBSTETRICS AND GYNECOLOGY (7th ed.), available at < https://www.inkling.com/read/obstetrics-gynecology-beckmann-7th/chapter-19/ectopic-pregnancy> (visited on March 27, 2014).

[237] Id.

[238] Id. *See* S. Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 50 (4th Ed. 2013).

[239] Id.

[240] Id.

[241] Id.

[242] *See* K. *Contraception: Mechanism of action of emergency contraception*, 82(5):404-9 (2010) available at (visited on March 24, 2014); See also World Health Organization Website, Emergency Contraception Fact Sheet, July 2012, , (visited on March 24, 2014).

[243] *See* Alliance for the Family Foundation, et al.'s Memorandum, pp. 134-136.

[244] Center for Disease Control and Prevention, What is Assisted Reproductive Technology, (visited March 24, 2014).

[245] National Institute of Child Health and Human Development, Assisted Reproductive Technologies, , (visited March 24, 2014).

[246] See S. Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 69-89 (4th Ed. 2013); *See* also IVF - What is in vitro fertilisation (IVF) and how does it work? Human Fertilisation Embryology Authority (visited March 27, 2014).

[247] *See* S. Geoffrey, et al., IN VITRO FERTILIZATION: THE A.R.T.* OF MAKING BABIES (*ASSISTED REPRODUCTIVE TECHNOLOGY) 90-114 (4th Ed. 2013); See also IVF - What is in vitro fertilisation (IVF) and how does it work? Human Fertilisation Embryology Authority (visited March 27, 2014).

[248] Id.

[249] *See* also IVF - What is in vitro fertilisation (IVF) and how does it work? Human Fertilisation Embryology Authority (visited March 27, 2014).

[250] *See for example* Abstract of N Darlington and P Matson, *The Fate of cryopreserved human embryos approaching their legal limit of storage within a West Australian in-vitro fertilization clinic,* Human Reproduction 14(9),2343-4 (1999), (visited March 27,, 2014); (*See* also abstract by R. Nachtigall et al., *How couples who have undergone in vitro fertilization decide what to do with surplus frozen embryos* < http://www.researchgate.net/ publication/26760504_How_couples_who_have_undergone_in_vitro_fertilization_decide_what_to_do_with_surplus_frozen_embryos> (visited March 27, 2014); See also IVF - What is in vitro fertilisation (IVF) and how does it work? Human Fertilisation Embryology Authority < March 27, 2014).

[251] Id.

[252] Ponencia, p. 45.

[253] Id.

[254] 603 SCRA 621, 634-635 (2009).

[255] *Continental Steel v. Montano*, 603 SCRA 621, 634-635 (2009).

[256] Rep. Act No. 9711. Section 5(h) (2009).

[257] HP Rang, et al., Rang and Dale's Pharmacology 37(7th ed. 2012).

[258] Id at 37-38.

[259] Id. at 39-41.

[260] Id. at 39-41.

[261] MIMS, Philippines, Aspilets ,http://www.mims.com/Philippines/drug/info/aspilets-aspilets-

ec/?q=aspirin&type=brief> (visited March 25, 2014).

[262] Id.

[263] MIMS, Philippines,

(visited March 25, 2014).

[264] Id.

[265] *See* Abstract JW, Gardner, *Death by water intoxication,* MIL MED. 167(5), 432-4 (2002) , (visited March 24, 2014).

[266]Monthly Prescribing Reference (MPR) (visited April 3, 2014).

[267] *See* Pia Cayetano, Memorandum, *rollo* (G.R. No. 204819), vol. 4, p. 3041.

[268] Id. at 3045.

[269] *See Morfe v. Mutuc*, G.R. L-20387, 22 SCRA 424, January 31, 1968 [En Banc, J. Fernando]; *See also Ermita-Malata Hotel and Motel Operators Association, Inc. v. City Mayor of Manila,* G.R. L-24693, 20 SCRA 849, July 31, 1967. [En Banc, J. Fernando].

[270] Philippine Drug Formulary: Essential Drugs List, Vol. 7, 2008. 78-80.

[271] Id. at vii-viii.

[272] Id. at 146.

[273] Rep. Act No. 9711. Section 5(h) (2009).

[274] See Declaration of Geneva (1948). Adopted by the General Assembly of World Medical Association at Geneva Switzerland, September 1948. The Philippine Medical Association is a member of the World Medical Association. (visited April 4, 2014); See also Hippocratic Oath, available at: (visited April 4, 2014).

[275] R Cook, and B Dickens, *The Growing Abuse of Conscientious Objection,* VIRTUAL MENTOR: ETHICS JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 8(5), 337-340 (2006). (The article cites the World Medical Association's Declaration of Geneva available at); See also R Cook, et al. REPRODUCTIVE HEALTH AND HUMAN RIGHTS: INTEGRATING MEDICINE, ETHICS AND LAW, 139-142, 213-214, 291-292 (2003). *See* Also B Dickens and R Cook, *The Scope and Limits of Conscientious Objection,* Int. J. Gynaecol Obstet. 71,71-77 (2000); *See also* J Savulescu *Conscientious objection in medicine* British Medical Journal, 332, 294-297 (2006).

[276] J. Morrison and M. Allekotte, *Duty First: Towards Patient-Centered Care and Limitations on the Right to Refuse for Moral, Religious, or Ethical Reasons.* AVE MARIA LAW REVIEW, Vol. 9, No. 1, pp. 141-184 (2010).

[277] R. Cook and B. Dickens, *Op-Ed The Growing Abuse of Conscientious Objection.* ETHICS JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION. Vol. 8 No. 5, pp.337-340 (2006).

[278] Rep. Act No. 10354, Section 4(q).

[279] *See* M. Lindenbaum, *Religious Conscientious Objection and the Establishment Clause in the Rehnquist Court: Seeger, Welsh, Gillette, and § 6(j) Revisited,* 36 Colum. J.L. & Soc. Probs. 237, 263 (This article discussed Supreme Court decisions interpreting Section 6(j) of the Military Selective Service Act, which provided an exemption from services in the United States army for those "who, by religious training and belief [are] conscientiously opposed to war in any form.").

[280] CONSTITUTION, Article III, section 5.

[281] CONSTITUTION, Article III, section 5. No law shall be made respecting an establishment of religion x x

x.

[282] CONSTITUTION, Article II, section 6.

[283] CONSTITUTION, Article III, section 5. x x x The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed x x x.

[284] G.R. No. 119673. 259 SCRA 529 (1996) [En Banc, Per J. Puno].

[285] Id. at 544.

[286] *Estrada v. Escritor,* A.M. No. P-02-1651, 408 SCRA 1 (2003) [En Banc, Per J. Puno].

[287] Id. at167-168.

[288] Id. at106-107, citing *Lemon v. Kurtzman*, 403 U.S. 602 (1971), pp. 612-613.

[289] (visited March 23, 2014).

[290]

religion/what_is_religion> (visited March 23, 2014).

[291] See I. Howerth, *What is Religion*? INTERNATIONAL JOURNAL OF ETHICS, 13(2), (1903). available at (visited March 22, 2014).

[292] *Aglipay v. Ruiz,* 64 Phil 201 (1937) [Per J. Laurel].

[293] Id. at 206.

[294] *See The Concept of Religion*, 107 Yale L.J. 791 (1997) and its discussions on Wittgenstein.

[295] De Venecia, et al. Comment-in-Intervention, rollo (G.R. No. 205491), vol. 1, p. 376. *citing* Gary Wills, *Papal Sin: Structures of Deceit,* (New York: Image, 2001), at 75.

[296] Id. citing Truth & Consequence, Wills at 7.

[297] Id. at 377 *citing* Gary Wills, *Papal Sin: Structures of Deceit,* (New York: Image, 2001), at 88-89.

[298] Id. at 378.

[299] Id. *citing* Gary Wills, *Papal Sin: Structures of Deceit,* (New York: Image, 2001), at 94, *and noting that* these were Father John Ford and Cardinal Ottaviani, working with an ultraconservative theologian, Germain Grisez, whom they had brought into the committee's work for that purpose, and whom the Pro-Life Petition cites in pars. 52-53, at 24.

[300] Id. *citing* Gary Wills, *Papal Sin: Structures of Deceit,* (New York: Image, 2001), at 95.

[301] Id. at 376, *citing* Gary Wills*, Papal Sin: Structures of Deceit,* (New York: Image, 2001), at 95-96.

[302] De Venecia, et al. Comment-in-Intervention, *rollo* (G.R. No. 205491), vol. 1, p. 382. *citing* Gary Wills, *Papal Sin: Structures of Deceit,* (New York: Image, 2001), at 73-82.

[303] Id. at 379-388 *citing* Gary Wills, *Papal Sin: Structures of Deceit,* (New York: Image, 2001), at 89-96.

[304] Id. at 390, *citing* Truth & Consequence, Wills at 7.

[305] See D. Gonzales, FUNDAMENTALISM AND PLURALISM IN THE CHURCH, ed., 94-96 (2004):

Fundamentalist beliefs were first articulated with the publication of a series of twelve pamphlets published between 1910 and 1915 with the title, *The Fundamentals*. North American fundamentalist beliefs are generally characterized by four features: evangelism, inerrancy, dispensational premillennialism, and separatism. (Dumestre, 49).

1. Evangelism – the compulsion to evangelize comes from the importance that fundamentalists place in "being saved." If being saved is the sure way to heaven, then it is incumbent upon the "saved" to bring Jesus Christ to the "lost."
2. Inerrancy – fundamentalists believe in an inerrant interpretation of the Bible. In other words, no part of the Bible can be in error.
3. Dispensational Premillenialism means that salvation will be dispensed to the Christian faithful at the coming of Christ prior to the millennium (the thousand-year reign of Christ)(Mt 24, 1 Th 4).
4. Separatism – dissenting opinions are not tolerated by fundamentalists; their primary value is uniformity of belief and practice.

[306] Millennium Saint Foundation, Inc. Memorandum, p. 26.

[307] Couples for Christ Petition, rollo (G.R. No. 207172), vol. 1, p 31.

[308] Ponencia, p. 78.

[309] CONSTITUTION, Article XV, section 3. The State shall defend:

1. The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

[310] *Morfe v. Mutuc,* 130 Phil 415 (1968) [Per J. Fernando].

[311] Id. at 435-436.

[312] *See also Note on Reproductive Technology and The Procreation Rights of the Unmarried*, 98 Harv. L. Rev. 669, (1985).

[313] *See* P. Scheininger, *Legal Separateness, Private Connectedness: An Impediment to Gender Equality in the Family*, 31 Colum. J.L. & Soc. Probs. 283, 304.

[314] *Ponencia*, pp. 79-80.

[315] J. Reyes, Concurring and Dissenting Opinion, p. 6.

[316] Id. at 78.

[317] Id. at 79.

[318] *Garcia v. Executive Secretary,* G.R. No. 100883, December 2, 1991, 204 SCRA 516, 523 [En Banc, per J. Cruz]

[319] *See* Del Castillo, J., Concurring and Dissenting Opinion, pp. 19-35.

[320] *Cited* as 361 Phil. 73 (1999).

[321] *Cited* as 361 Phil. 73, 88 (1999).

[322] Del Castillo, J., Concurring and Dissenting Opinion, p. 20.

[323] Id. at 26-27.

[324] 361 Phil. 73 (1999); 301 SCRA 96, 112.

[325] CONSTITUTION, Article, VII, section 17.

[326] *Angara v. Electoral Commission,* 63 Phil. 139, 156 (1936) [Per J. Laurel, En Banc].

[327] CONSTITUTION, Article VIII, section 1.

[328] CONSTITUTION, Article VIII, section 1.

[329] Comment-in-Intervention, Representative Edcel B. Lagman, *rollo* (G.R. No. 204819), vol. 1, p. 198 ("from the 11th Congress to the current 15th Congress x x x [which included] the latest versions of the Reproductive Health Bills (House Bill No. 4244, entitled "An Act Providing for a Comprehensive Policy on Responsible Parenthood, Reproductive Health, and Population and Development and For Other Purposes" in the House of Representatives and Senate Bill No. 2865, entitled "An Act Providing for a National Policy on Reproductive Health and Population and Development" in the Senate.) *See also* Office of the Solicitor General Memorandum, pp. 6 and 11.

[330] (In a UNICEF study covering the period 1990-2011, it was estimated that *"in the Philippines, 13 mothers die every day from pregnancy-related complications. An estimated 5,000 maternal deaths occur annually – and may be on the increase. The most recent health survey indicated that the maternal mortality ratio had increased, from 162 per 100,000 live births in 2006 to 221 in 2011)"* See WHO Maternal and Perinatal Health Profile for the Western Pacific Region, Philippines (visited March 21, 2014); (visited March 25, 2014); (Maternal death is defined as "...the death of a women within 42 days of the end of pregnancy, regardless of duration or site of pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental (e.g. auto accident or gunshot wound) or incidental causes. (e.g. concurrent malignancy)", See Hernandez, Jr., Emilio et.al. *Standards of Newborn* Care. 4 (3rd Ed. 2008) Philippine Society of Newborn Medicine, Philippine Pediatric Society.

[331] (In 2008, the still-birth rate was 14.4 per 1000 pregnancies of at least 7 months duration.) See (visited April 6, 2014).

[332] (Neonatal death is defined as "Death of live born neonate before the neonate becomes 28 days (up to and including 27 days, 23 hours, 59 minutes from the moment of birth.)"), See Hernandez, Jr., Emilio et.al. *Standards of Newborn* Care. 3 (3rd ed. 2008)

Philippine Society of Newborn Medicine, Philippine Pediatric Society.;(The 2008 National Demographic and Health Survey estimates that the neonatal mortality rate within the 5 preceding years was 16 deaths per 1000 live births.)

[333] (Demand for family planning: poorest 20% quintile--about 60%, richest 20% quintile, 70%; Access to skilled birth attendance: poorest 20% quintile—about 25%, richest 20% quintile—about 90%; Delivery in a health facility: poorest—about 10%, richest—about 75%; Antenatal care utilization: lowest quintile—77.1%, highest quintile—98.3%) See (visited April 3, 2014) through May 2013; See also R. Lavado L. Lagrada, Are Maternal and Child Care Programs Reaching the Poorest Regions in the Philippines? Discussion Paper Series No. 2008-30, (November 2008) (visited April 3, 2014); 2008 National Demographic and Health Survey, Demographic and Health Surveys Program, (visited April 3, 2014);

Source: Supreme Court E-Library
This page was dynamically generated
by the E-Library Content Management System (E-LibCMS)