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Agenda for April 8, 2014
Item No. 15

G.R. No. 204819 – JAMES M. IMBONG, et al., *Petitioners*, v. HON. PAQUITO N. OCHOA, JR., Executive Secretary, et al., *Respondents*; G.R. No. 204934 – ALLIANCE FOR THE FAMILY FOUNDATION PHILIPPINES, INC., *Petitioners*, v. HON. PAQUITO N. OCHOA, JR., Executive Secretary, et al., *Respondents*; G.R. No. 204957 – TASK FORCE FOR FAMILY AND LIFE VISAYAS, INC. and VALERIANO S. AVILA, *Petitioners*, v. HON. PAQUITO N. OCHOA, JR., Executive Secretary, et al., *Respondents*; G.R. No. 204988 – SERVE LIFE CAGAYAN DE ORO CITY, INC., et al., *Petitioners*, v. OFFICE OF THE PRESIDENT, et al., *Respondents*; G.R. No. 205003 – EXPEDITO A. BUGARIN, JR., *Petitioner*, v. OFFICE OF THE PRESIDENT, et al., *Respondents*; G.R. No. 205043 – EDUARDO B. OLAGUER and the CATHOLIC XYBRSPACE APOSTOLATE OF THE PHILIPPINES, *Petitioners,* v. DOH SECRETARY ENRIQUE T. ONA, et al., *Respondents*; G.R. No. 205138 – PHILIPPINE ALLIANCE OF XSEMINARIANS, INC., et al., *Petitioners*, v. HON. PAQUITO N. OCHOA, JR., Executive Secretary, et al., *Respondents*; G.R. No. 205478 – REYNALDO J. ECHAVEZ, M.D., et al., *Petitioners*, v. HON. PAQUITO N. OCHOA, JR., Executive Secretary, et al., *Respondents*; G.R. No. 205491 – SPOUSES FRANCISCO S. TATAD and MARIA FENNY C. TATAD, et al., *Petitioners*, v. OFFICE OF THE PRESIDENT, *Respondent*; G.R. No. 205720 – PRO-LIFE PHILIPPINES FOUNDATION, INC., et al., *Petitioners,* v. OFFICE OF THE PRESIDENT, et al., *Respondents*; G.R. No. 206355 – MILLENIUM SAINT FOUNDATION, INC., et al., *Petitioners,* v. OFFICE OF THE PRESIDENT, et al., *Respondents*; G.R. No. 207111 – JOHN WALTER B. JUAT, et al., *Petitioners*, v. HON. PAQUITO N. OCHOA, JR., Executive Secretary, et al., *Respondents*; G.R. No. 207172 – COUPLES FOR CHRIST FOUNDATION, INC., et al., *Petitioners*, v. HON. PAQUITO N. OCHOA, JR., Executive Secretary, et al., *Respondents*; and G.R. No. 207563 – ALMARIM CENTI TILLAH and ABDULHUSSEIN M. KASHIM, *Petitioners*, v. HON. PAQUITO N. OCHOA, JR., Executive Secretary, et al., *Respondents*.

Promulgated:

April 8, 2014

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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.
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> - 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

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1 <http://acbanews.wordpress.com/2014/02/17/george-washington/> (visited April 5, 2014).

2 Section1, Article II of the 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.

3 *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 of the Food and Drug Administration (FDA).

9 Section 3.01 For purposes of these Rules, the terms shall be defined as follows:
x x x x

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]

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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).

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.
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> 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.
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> x x x x (Emphasis supplied)

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

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15 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. (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:

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 on the following persons in the following instances:

x x x x (Emphasis supplied)

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.

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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:

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 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).

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 information 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.

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[23] See *ponencia*, pp. 74-75, citations omitted.
[24] Id. at 67.

Neither do I find Section 23(a)(1) 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 provisions on information dissemination and performance be upheld as constitutional.

II. Section 23(b) of the RH Law in relation to Section 5.24 of the RH-IRR *vis-à-vis* the 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:
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> 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;
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> 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:
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> > 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
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> > e) Other requirements as determined by the DOH.
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> 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.
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> ***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. (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 the *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 the 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

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[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.

who have suffered a miscarriage access to modern methods of family planning without written consent from their parents or guardian/s. 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**.
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> 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:
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> x x x x
>
> (4) 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**; (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

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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 without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage**. (Emphasis and underscoring supplied)

28 See *ponencia*, pp. 79-80.

29 Executive Order No. 209, as amended.

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 modern day methods of family planning. In a predominantly conservative culture like ours, wherein the thought that pre-marital 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 modern 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 with the need for prior parental consent in reference to mere information dissemination and access to modern 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:
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> 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:
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> x 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
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> 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,

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[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 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:

(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.

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 PhilHealth 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]

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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.

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.

ESTELA M. PERLAS-BERNABE
Associate Justice

[37] Albert Camus, "*Resistance, Rebellion, and Death: Essays*," p. 103 (1961).