EN BANC

G.R. No. 204819 – James M. Imbong, et al. v. Hon. Paquito N. Ochoa, Jr., et al.; **G.R. No. 204934** – Alliance for the Family Foundation Philippines, Inc. (ALFI), et al. v. Hon. Paquito N. Ochoa, et al.; **G.R. No. 204957** – Task Force for Family and Life, Inc., et al. v. Hon. Paquito N. Ochoa, Jr., et al.; **G.R. No. 204988** – Serve Life Cagayan de Oro City, Inc., et al. v. Office of the President, et al.; **G.R. No. 205003** – Expedito A. Bugarin, Jr. v. Office of the President of the Republic of the Philippines, et al.; **G.R. No. 205043** – Eduardo B. Olaguer, et al. v. DOH Secretary Enrique T. Ona, et al.; **G.R. No. 205138** – Philippine Alliance of Xseminarians, Inc. (PAX), et al. v. Hon. Paquito N. Ochoa, Jr., et al.; **G.R. No. 205478** – Reynaldo J. Echavez, M.D., et al. v. Hon Paquito N. Ochoa Jr., et al.; **G.R. No. 205491** – Spouses Francisco S. Tatad, et. al. v. Office of the President of the Republic of the Philippines; **G.R. No. 205720** – Pro-Life Philippines Foundation, Inc., et al. v. Office of the President, et al.; **G.R. No. 206355** – Millennium Saint Foundation, Inc., et al. v. Office of the President, et al.; **G.R. No. 207111** – John Walter B. Juat, et al. v. Hon. Paquito N. Ochoa, Jr., et al.; **G.R. No. 207172** – Couples for Christ Foundation, Inc., et al. v. Hon. Paquito N. Ochoa, Jr., et al.; and **G.R. No. 207563** – Almarim Centi Tillah, et al. v. Hon. Paquito N. Ochoa, Jr., et al.

x----------x April 8, 2014 x

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

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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].

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

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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).

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.

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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 <http://www.cdc.gov/art/> (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).

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]

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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.) <http://www.wma.net/en/60about/10members/21memberlist/index.html?letter=P#Philippines> (visited April 4, 2014); *See also* Hippocratic Oath, available at <https://www.philippinemedicalassociation.org/downloads/pma-codes/HIPPOCRATIC-OATH.pdf> (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.

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

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[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].

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

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[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].

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.
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> 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

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33 Id. at 443-449.
34 Id. at 450.
35 Id. at 518.

> 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

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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.

> 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.
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> 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.
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> 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.
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> Information Technology Foundation of the Philippines v. COMELEC cannot be more emphatic:

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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].

> "[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."
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> 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.
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> 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.
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> 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

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45 Id. at 175-177.

46 G.R. No. 186613, August 27, 2013, 703 SCRA 623 [Per J. Perez, En Banc].

> 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.
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> 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.

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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.

> 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]

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[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.

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]

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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].

> [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

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[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

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)

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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.

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)

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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.

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.
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> **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

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[65] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

> 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

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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].

> 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:

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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].

> 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.

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72 Id at 316.

73 G.R. No. 178552, October 5, 2010, 632 SCRA 146 [Per J. Carpio-Morales, En Banc].

> 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

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[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).

> 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*

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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.

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)

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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.

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.
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> 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
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> 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

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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.

> 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

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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].

> 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

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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].

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

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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.

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]

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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.

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

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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].

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:

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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.

> (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.

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124 The Philippine National Drug Formulary System and Family Planning Supplies.
125 Ponencia, p. 48.
126 Id.
127 Id.

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**

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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.

> **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:

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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.

> 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.
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> **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]
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> 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:
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> 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

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136 Id.
137 Id.

> 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.

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[138] RCC No. 32, Vol. 1, July 17, 1986.

* Corrected. Earlier version had an erratum.

> 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

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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.

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]

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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.

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

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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* <http://www.bbc.co.uk/religion/religions/christianity/christianethics/abortion_1.shtml > (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.

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)

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160 *See* <http://www.bbc.co.uk/religion/religions/christianity/christianethics/abortion_1.shtml> (visited March 29, 2014).

161 *See* <http://www.bbc.co.uk/religion/religions/buddhism/buddhistethics/abortion.shtml> (visited March 29, 2014); <http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/abortion_1.shtml> (visited March 29, 2014); <http://www.bbc.co.uk/religion/religions/sikhism/sikhethics/abortion.shtml> (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.

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.

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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.

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.

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170 N. Manish, APPROACH TO PRACTICAL PEDIATRICS 303 (2011); <http://ghr.nlm.nih.gov/condition/down-syndrome> (visited March 28, 2014).

171 *See* L. Crowley, AN INTRODUCTION TO HUMAN DISEASE: PATHOLOGY AND PATHOPHYSIOLOGY CORRELATIONS 169 (2013); <http://ghr.nlm.nih.gov/condition/turner-syndrome> (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.

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

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* <http://www.doh.gov.ph/kp/statistics/maternal_deaths.html> (visited March 29, 2014).

*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]

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[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, <http://www.newadvent.org/summa/3064.htm#article7> (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 <http://www.jstor.org/discover/10.2307/27504131?uid=3738824&uid=2134&uid=12432296&uid=2&uid=70&uid=3&uid=8373192&uid=60&sid=21103877267793> (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 <http://www.jstor.org/discover/10.2307/27504131?uid=3738824&uid=2134&uid=12432296&uid=2&uid=70&uid=3&uid=8373192&uid=60&sid=21103877267793> (visited March 29, 2014).

[184] Vol. IV, September 16, 1986, RCC No. 84.

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.

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185 Dr. R. Virola, Statistics on Violence Against Women and Children: A Morally Rejuvenating Philippine Society? <http://www.nscb.gov.ph/headlines/StatsSpeak/2008/090808_rav_wedc.asp> (visited March 29, 2014); Dr. R. Virola, Abused Children, <http://www.nscb.gov.ph/headlines/StatsSpeak/2011/101011_rav.asp> (visited March 29, 2014).

186 Dr. R. Virola, Abused Children, <http://www.nscb.gov.ph/headlines/StatsSpeak/2011/101011_rav.asp> (visited March 29, 2014).

187 2008 National Demographic and Health Survey, accessed from Demographic and Health Surveys Program, website at <http://dhsprogram.com/pubs/pdf/FR224/FR224.pdf> 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.

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.

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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 <http://nfp.marquette.edu/reproduction.php> (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 <http://nfp.marquette.edu/reproduction.php> (visitedMarch 27, 2014); *See also* C. Thibault, Physiology and physiopathology of the fallopian tube by, <http://www.popline.org/node/494007> (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.

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

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201 Id.
202 Id. 665.
203 *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).
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.

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

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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, <http://www.reuters.com/article/2011/11/17/us-when-does-pregnancy-begin-idUSTRE7AG24B20111117> (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.

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:

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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.

> 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

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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 <http://www.acog.org/~/media/For%20Patients/faq155.pdf?dmc=1&ts=20140323T2143090835> (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 <http://www.acog.org/~/media/For%20Patients/faq155.pdf?dmc=1&ts=20140323T2143090835> (visitedon March 24, 2014); *See* C. Beckman, et al., OBSTETRICS AND GYNECOLOGY (7th ed.),

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,

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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 <http://www.ncbi.nlm.nih.gov/pubmed/20933113> (visited on March 24, 2014); *See* also World Health Organization Website, Emergency Contraception Fact Sheet, July 2012, <http://www.who.int/mediacentre/factsheets/fs244/en/>, (visited on March 24, 2014).

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

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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, <http://www.cdc.gov/art/> (visited March 24, 2014).

245 National Institute of Child Health and Human Development, Assisted Reproductive Technologies, <https://www.nichd.nih.gov/health/topics/infertility/conditioninfo/pages/art.aspx>, (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 <http://www.hfea.gov.uk/IVF.html> (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 <http://www.hfea.gov.uk/IVF.html> (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 <http://www.hfea.gov.uk/IVF.html> (visited March 27, 2014).

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

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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), <http://www.researchgate.net/publication/12829735_The_fate_of_cryopreserved_human_embryos_approaching_their_legal_limit_of_storage_within_a_West_Australian_in-vitro_fertilization_clinic> (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).

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)

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[255] *Continental Steel v. Montano*, 603 SCRA 621, 634-635 (2009).

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]

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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.

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]

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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, <http://www.mims.com/Philippines/drug/info/Aldomet/?type=full#SideEffects>(visited March 25, 2014).

264 Id.

265 *See* Abstract JW, Gardner, *Death by water intoxication*, MIL MED. 167(5), 432-4 (2002) <http://www.ncbi.nlm.nih.gov/pubmed/12053855> , (visited March 24, 2014).

266 Monthly Prescribing Reference (MPR) <http://www.empr.com/drugs-contraindicated-in-pregnancy/article/125914/> (visited April 3, 2014).

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]

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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.

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:
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> 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***

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[272] Id. at 146.
[273] Rep. Act No. 9711. Section 5(h) (2009).

> ***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)

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[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. <http://www.wma.net/en/60about/10members/21memberlist/index.html?letter=P#Philippines> (visited April 4, 2014); *See also* Hippocratic Oath, available at: <https://www.philippinemedicalassociation.org/downloads/pma-codes/HIPPOCRATIC-OATH.pdf> (visited April 4, 2014).

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]

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[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 <www.wma.net/e/policy/c8.htm>); *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).

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.

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[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).

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.
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> 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]

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[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.

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*

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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].

> *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]

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287 Id. at167-168.

288 Id. at106-107, *citing Lemon v. Kurtzman,* 403 U.S. 602 (1971), pp. 612-613.

289 <http://www.merriam-webster.com/dictionary/religion> (visited March 23, 2014).

290 <http://www.onu.edu/academics/college_of_arts_sciences/academic_departments/philosophy_and_religion/what_is_religion> (visited March 23, 2014).

291 *See* I. Howerth,*What is Religion?* INTERNATIONAL JOURNAL OF ETHICS, 13(2), (1903). available at <http://www.jstor.org/stable/2376451?seq=21> (visited March 22, 2014).

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.

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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.

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]

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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.

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.

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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.

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:
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> > ***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.

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[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.

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:

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[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.

> (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

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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;

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:

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310 *Morfe v. Mutuc,* 130 Phil 415 (1968) [Per J. Fernando].
311 Id. at 435-436.

> 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

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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.

> 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

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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]

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 s*tronger and more independent judiciary.* Among others, *it enhanced the rule making power of this Court.* Its Section 5(5), Article VIII, provides:
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> xxx xxx xxx

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[319] *See* Del Castillo, J., Concurring and Dissenting Opinion, pp. 19-35.
[320] *Cited* as 361 Phil. 73 (1999).

> "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

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[321] *Cited* as 361 Phil. 73, 88 (1999).

> 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]

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322 Del Castillo, J., Concurring and Dissenting Opinion, p. 20.
323 Id. at 26-27.

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)

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[324] 361 Phil. 73 (1999); 301 SCRA 96, 112.

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.

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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.

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.

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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.

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

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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 <http://www.who.int/maternal_child_adolescent/epidemiology/profiles/maternal/phl.pdf?ua=1> (visited March 21, 2014); <http://www.unicef.org/philippines/MNH_Philippines_Country_Profile.pdf>(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* <http://www.who.int/maternal_child_adolescent/epidemiology/profiles/maternal/phl.pdf> (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* <http://countdown2015mnch.org/documents/2013Report/Philippines_Accountability_profile_2013.pdf >(visited April 3, 2014) through<http://www.who.int/gho/countries/phl/country_profiles/en> 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) <http://dirp4.pids.gov.ph/ris/dps/pidsdps0830.pdf> (visited April 3, 2014); 2008 National Demographic and Health Survey, Demographic and Health Surveys Program, <http://dhsprogram.com/pubs/pdf/FR224/FR224.pdf> (visited April 3, 2014);

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.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice