**G.R. No. 204819** – James M. Imbong and Lovely-Ann C. Imbong, Petitioners vs. Hon. Pacquito N. Ochoa, Jr., Hon. Florencio B. Abad, Hon. Enrique T. Ona, Hon. Armin A. Luistro, and Hon. Manuel A. Roxas II, Respondents.

**G.R. No. 204934** – Alliance for the Family Foundation Philippines, Inc. Petitioner vs. Hon. Paquito N. Ochoa, Jr., et. al., Respondents.

**G.R. No. 204957** – Task Force for Family and Life Visayas, Inc. and Valeriano S. Avila vs. Hon. Paquito N. Ochoa, Jr., Executive Secretary, et. al., Respondents.

**G.R. No. 205003** – Expedito A. Bugarin, Jr., Petitioner vs. Offices of the Hon. President of the Republic of the Philippines, Hon. Senate President, Hon. Speaker of the House of Representatives and Hon. Solicitor General, Respondents.

**G.R. No. 205138** – Philippine Alliance of Xseminarians, Inc. vs. Hon. Paquito N. Ochoa, Jr., et. al., Respondents.

**G.R. No. 204988** – Serve Life Cagayan de Oro City, Inc., et. al. vs. Office of the President, et. al., Respondents.

**G.R. No. 205043** – Eduardo Olaguer and the Catholic Xybrspace Apostolate of the Philippines vs. DOH Secretary Enrique Ona, FDA Director Suzette Lazo, DBM Secretary Florencio Abad, DILG Secretary Manuel Roxas and DECS Secretary Armin Luistro, Respondents.

**G.R. No. 205478** – Reynaldo J. Echavez, M.D., Jacqueline H. King, M.D., Cynthia T. Domingo, M.D. et. al., Petitioners vs. Hon. Paquito N. Ochoa, Jr., Respondents.

**G.R. No. 205491** – Spouses Francisco S. Tatad and Maria Fenny C. Tatad & Alan F. Paguia vs. Office of the President, et. al., Respondents.

**G.R. No. 205720** – Pro-Life Philippines Foundation, Inc., et. al. vs. Office of the President, et. al., Respondents.

**G.R. No. 206355** – Millennium Saint Foundation, Inc. Atty. Ramon Pedrosa, Atty. Cita Borromeo-Garcia, Stella Acedera, Atty. Berteni Cataluña Causing, Petitioners vs. Office of the President, Respodents.

**G.R. No. 207111** – John Walter B. Juat, et. al. vs. Hon. Paquito N. Ochoa, Jr., et. al., Respondents.

**G.R. No. 207172** – Couples for Christ Foundation, Inc., et. al. vs. Hon. Paquito N. Ochoa Jr., et. al., Respondents.

**G.R. No. 207563** – Almarin Centi Tillah, et al. vs. Hon. Paquito N. Ochoa, Jr., et. al., Respondents.

April 8, 2014

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# CONCURRING AND DISSENTING

**DEL CASTILLO, *J.*:**

Our nation is at a crossroads.

Perhaps no other piece of legislation in recent history has so bitterly and piercingly divided us as much as Republic Act No. 10354[1] or more popularly known as the RH Law. That this law has cut deeply into the consciousness and wounded the soul of our nation is evident from the profound depth of conviction with which both proponents and opponents of this law have argued their cause before the bar of public opinion, Congress, and now, before this Court.

With the passage of the RH Law, the present case before us is the last remaining obstacle to its implementation.

The RH Law is primarily a national family planning policy with universal access to contraceptives and informed-free choice as its centerpiece. Its proponents laud the law for what they perceive as a sound and aggressive contraceptive strategy geared towards population control, poverty alleviation, women empowerment, and responsible parenthood. Its opponents, however, deplore the law for what they claim brings about a contraceptive mentality leading to the lowering of moral standards, destruction of marriage and the family, a population winter, and a culture of death.

The path that we, as a nation, will take has already been decided by Congress, as representatives of the people, under our system of government. The task before the Court, then, is not to say which path we ought to take but to determine if the chosen path treads on unconstitutional grounds. But this is not all. For the Court, which was once generally a passive organ in our constitutional order, has been given expanded powers under the present Constitution. It is now not only its right but its bounden duty to determine grave abuse of discretion on the part of any branch, instrumentality or agency of government,[2] and, equally important, it has been given the power to issue rules for the protection and enforcement of constitutional rights.[3] The Court cannot, therefore, remain an idle spectator or a disinterested referee when constitutional rights are at stake. It is its duty to protect and defend constitutional rights for otherwise its *raison d'etre* will cease.

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1 Responsible Parenthood and Reproductive Health Act of 2012.
2 CONSTITUTION, Article VIII, Section 1.
3 CONSTITUTION, Article VIII, Section 5(5).

With these considerations in mind, I am of the view that the social gains or ills, whether imagined or real, resulting from the implementation of the RH Law is beyond the scope of judicial review. Thus, even if we assume that the grave and catastrophic predictions of the opponents of the RH Law manifest itself later on, the remedy would lie with Congress to repeal or amend the law. We have entrusted our destiny as a nation to this system of government with the underlying hope that Congress will find the enlightenment and muster the will to change the course they have set under this law should it prove unwise or detrimental to the life of our nation. The battle in this regard remains within the legislative sphere. And there is no obstacle for the law's opponents to continue fighting the good fight in the halls of Congress, if they so choose. Thus, the Court will refrain from ruling on the validity of the RH Law based on its wisdom or expediency.

This is not to say, however, that this law is beyond judicial scrutiny. While I will tackle several constitutional questions presented before this Court in this Opinion, it is my considered view that the paramount issue, which is properly the subject of constitutional litigation, hinges on two vital questions: (1) when does the life of the unborn begin? and (2) how do we ought to protect and defend this life?

On the first question, I am fully in accord with the result reached by the *ponencia.* Absent a clear and unequivocal constitutional prohibition on the manufacture, distribution, and use of contraceptives, there is nothing to prevent Congress from adopting a national family planning policy *provided* that the contraceptives that will be used pursuant thereto do not harm or destroy the life of the unborn from conception, which is synonymous to fertilization, under Article II, Section 12[4] of the Constitution. The plain meaning of this constitutional provision and the deliberations of the Constitutional Commission bare this out.

It is upon the answer to the second question, however, where I find myself unable to fully agree with the *ponencia*. Congress accomplished a commendable undertaking when it passed the RH Law with *utmost respect* for the life of the unborn from conception/fertilization. Indeed, this law is replete with provisions seeking to protect and uphold the right to life of the unborn in consonance with the Constitution.

However, where the task of Congress ends, the Court's charge begins for it is mandated by the Constitution to protect and defend constitutional rights. With the impending implementation of the RH Law, the Court cannot turn a blind eye when the right to life of the unborn may be imperiled or jeopardized. Within its constitutionally-mandated role as guardian and defender of constitutional rights, in general, and its expanded power to issue rules for the protection and enforcement

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

of such rights, in particular, the Court may, thus, issue such orders as are necessary and essential to protect, defend and enforce the right to life of the unborn.

The framers of, and the people who ratified the Constitution set in bold and deft strokes the protection of the life of the unborn from conception/fertilization because it is *precious*, *sacred* and *inviolable*. For as long as this precept remains written in our Constitution, our solemn duty is to stay the course in fidelity to the most cherished values and wisdom of those who came before us and to whom we entrusted the writing and ratification of our Constitution. History will judge this Court on what it did or did not do to protect the life of the unborn from conception/fertilization. There is, therefore, no other recourse but for this Court to act in defense of the life of the unborn.

These reasons primarily impel the writing of this Opinion.

*Deliberations of the Constitutional Commission on Article II, Section 12 of the Constitution.*

Article II, Section 12 of the Constitution provides, in part:

> Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn **from conception**. x x x (Emphasis supplied)

Article II, Section 12 of the present Constitution was originally Article II, Section 9 of the draft of the Constitution:

> Section 9. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic social institution. The State shall equally protect the life of the mother and the life of the unborn **from the moment of conception**.[5] x x x (Emphasis supplied)

The draft of the Constitution was slightly differently worded as it made use of the phrase "from the moment of conception" while its present wording is "from conception." The change in wording, as will be discussed later, was to simplify the phraseology. But the intended meaning of both phrases, as deliberated by the Constitutional Commission, is the same.

The background and basis of the subject constitutional provision were explained in the sponsorship speech of Commissioner Villegas. He emphasized that, based on incontrovertible scientific evidence, the fertilized ovum is alive; that this life is human; and that the fertilized ovum is a human person. Though that last

[5] IV RECORD, CONSTITUTIONAL COMMISSION 579 (September 12, 1986).

point, he acknowledged, was highly contested in law. Commissioner Villegas went on to discuss why abortion could not be justified even in so-called hard cases such as pregnancies resulting from rape or incest; pregnancies of mentally ill mothers; and pregnancies of mothers mired in abject poverty.

The justification for disallowing abortion in hard cases sets the tone on the nature of the right to life of the unborn, as a fundamental right, that recurs throughout the deliberations:

> The main reason why we should say "no" (to abortion in hard cases) are: (1) a wrong cannot be righted by another wrong, (2) no one should be deprived of human life **without due process** and we have established scientifically that from the moment of conception, the fertilized ovum has already life; and (3) a fetus, just like any human, must be **presumed innocent unless proven guilty**. It is quite obvious that the fetus has done no wrong. Its only wrong is to be an unwanted baby.[6] (Emphasis supplied)

Commissioner Villegas would later re-emphasize this point at the end of his sponsorship speech, thus:

> What is being affirmed in this formulation is the **moral right** as well as the **constitutional right of the unborn child to life**. x x x The views I express here transcend religious differences. As I have declared in another occasion, this is not a Roman Catholic position. Since time immemorial, even before Christianity was brought to our soil, as you very well know, our ancestors referred to the baby in the womb of the mother as tao— siya'y nagdadalang-tao. Ang dinadala ay tao; hindi halaman, hindi hayop, hindi palaka— tao.
>
> Madam President, let me also quote from a non-Christian in our Commission. In a public hearing, the honorable Commissioner Uka said the following: "As a Muslim, I believe in the Ten Commandments, and one of the Ten Commandments is "Thou shalt not kill." From the time of conception, there is already life. Now if you put down that life, there is already killing, a violation of one of the Ten Commandments. The overwhelming majority of Filipinos agree with Commissioner Uka that we should support Section 9. We have received up to now more than 50,000 signatures from all over the Philippines, from individuals belonging to all walks of life. I do not think there is any other issue in which we have been bombarded with more numerous signatures. Let us, therefore, listen to all of them and mandate that the State should equally protect the life of the mother and the unborn from the moment of conception.[7] (Emphasis supplied)

Subsequently, Commissioner Nolledo would re-echo these views:

> Killing the fetus, while categorized as abortion in our Revised Penal Code, is plain murder because of its inability to defend itself. Let the unborn,

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6 IV RECORD, CONSTITUTIONAL COMMISSION 597 (September 12, 1986).
7 IV RECORD, CONSTITUTIONAL COMMISSION 599 (September 12, 1986).

> Madam President, the unborn which is cherished, precious and loving gift of God, enjoy constitutional protection in a Christian country like ours.[8]

The subject constitutional provision, thus, sought to *recognize* the right to life of the unborn as a fundamental right. As Commissioner Padilla observed:

> Madam President, after the sponsorship of Commissioner Villegas on Section 9, I wanted to state that I fully concur with his views in support of Section 9 on the right of the unborn from conception. I found his exposition to be logical, not necessarily creative, much less critical, but logical. Madam President, I would like to state that the Revised Penal Code does not only penalize infanticide but it has various provisions penalizing abortion; Article 256, intentional abortion; Article 257, unintentional abortion; Article 258, abortion practiced by the woman herself or by her parents; and Article 259, abortion practiced by a physician or midwife and dispensing of abortives.
>
> However, I believe the intention of the proponents of Section 9 is not only to affirm this punitive provision in the Penal Code **but to make clear that it is a fundamental right that deserves to be mentioned in the Constitution**.[9] (Emphasis supplied)

The unique status of the fundamental right accorded to the unborn was explored in later discussions. It was emphasized that the subject constitutional provision was intended to protect only the right to life of the unborn unlike the human person who enjoys the right to life, liberty and property:

> MR. SUAREZ. Going to these unborn children who will be given protection from the moment of conception, does the Commissioner have in mind giving them also proprietary rights, like the right to inheritance?
>
> MR. VILLEGAS. No, Madam President. Precisely, the question of whether or not that unborn is a legal person who can acquire property is completely a secondary question. **The only right that we want to protect from the moment of conception is the right to life, which is the beginning of all other rights.**
>
> MR. SUAREZ. So, only the right to life.
>
> MR. VILLEGAS. Yes, it is very clear, only the right to life.
>
> MR. SUAREZ. **That is the only right that is constitutionally protected by the State.**
>
> MR. VILLEGAS. That is right, Madam President.[10] (Emphasis supplied)

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8 IV RECORD, CONSTITUTIONAL COMMISSION 600 (September 12, 1986).
9 IV RECORD, CONSTITUTIONAL COMMISSION 602 (September 12, 1986).
10 IV RECORD, CONSTITUTIONAL COMMISSION 683 (September 16, 1986).

The deliberations also revealed that the subject constitutional provision was intended to prevent the Court from making a *Roe v. Wade*[11] ruling in our jurisdiction:

> MR. VILLEGAS. Yes, Madam President. As Commissioner Padilla already said, it is important that we have a constitutional provision that is more basic than the existing laws. In countries like the United States, they get involved in some ridiculous internal contradictions in their laws when they give the child the right to damages received while yet unborn, to inheritance, to blood transfusion over its mother's objection, to have a guardian appointed and other rights of citizenship; but they do not give him the right to life.
>
> As has happened after that infamous 1972 U.S. Supreme Court decision (Roe v. Wade), babies can be killed all the way up to 8 and 8 ½ months. So precisely this basic provision is necessary because inferior laws are sometimes imperfect and completely distorted. We have to make sure that the basic law will prevent all of these internal contradictions found in American jurisprudence because Filipino lawyers very often cite American jurisprudence.[12]
>
> x x x x
>
> MR. VILLEGAS. As I have said, we must prevent any possibility of legalized abortion, because there is enough jurisprudence that may be used by Congress or by our Supreme Court.
>
> Let me just read what happened after the *Roe v. Wade* decision in the U.S. Supreme Court. x x x
>
> So, these are the floodgates that are open?
>
> REV. RIGOS. Which are?
>
> MR. VILLEGAS. As I said, American jurisprudence looms large on Philippine practice and because it is a transcendental issue, we have to completely remove the possibility of our Congress and our Supreme Court following this tragic trail.[13]

There was, thus, a clear rejection of the theory used in *Roe v. Wade* that the test of human personality was viability. Further, the subject constitutional provision was intended to prohibit Congress from legalizing abortion:

> MR. VILLEGAS. "Protection" means any attempt on the life of the child from the moment of conception can be considered abortion and can be criminal.
>
> MR. SUAREZ. So, principally and exclusively, if I may say so, what the Commissioner has in mind is only an act outlawing abortion.

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11 410 U.S. 113 (1973).
12 IV RECORD, CONSTITUTIONAL COMMISSION 682 (September 16, 1986).
13 IV RECORD, CONSTITUTIONAL COMMISSION 707 (September 17, 1986).

MR. VILLEGAS. Exactly, Madam President.

MR. SUAREZ. So that is the real thrust and meaning of this particular provision.

MR. VILLEGAS. That is right.

MR. SUAREZ. Can we not just spell it out in our Constitution that abortion is outlawed, without stating the right to life of the unborn from the moment of conception, Madam President?

MR. VILLEGAS. No, because that would already be getting into the legal technicalities. That is already legislation. The moment we have this provision, all laws making abortion possible would be unconstitutional. That is the purpose of this provision, Madam President.[14]

x x x x

MR. NATIVIDAD. Madam President, I rose to ask these questions because I had the impression that this provision of the Constitution would prevent future Congresses from enacting laws legalizing abortion. Is my perception correct, Madam President?

MR. VILLEGAS. Exactly. Congress cannot legalize abortion. It would be unconstitutional.

MR. NATIVIDAD. In what way will it collide with this provision?

MR. VILLEGAS. Any direct killing of the unborn from the moment of conception would be going against the Constitution and, therefore, that law would be, if Congress attempts to make it legal, unconstitutional.[15]

The sole exception to this constitutional prohibition against abortion is when there is a need, in rare cases, to save the life of the mother which indirectly sacrifices the unborn's life under the principle of double effect:

MR. BENNAGEN. In making a decision as to which life takes priority, the life of the mother or the life of the unborn, what criteria are contemplated by the committee on which to base the decision?

MR. VILLEGAS. We have articulated this moral principle called the principle of double effect. Whenever there is need, for example, to perform a surgical operation on the mother because of a disease or some organic malfunctioning, then the direct intention is to save the mother. And if indirectly the child's life has to be sacrificed, that would not be abortion, that would not be killing. So, in those situations which we said are becoming rarer and rarer because of the tremendous advance of medical science, the mother's life is safe.[16]

Intricately related to the prohibition of legalizing abortion was the intention to

[14] IV RECORD, CONSTITUTIONAL COMMISSION 683 (September 16, 1986).
[15] IV RECORD, CONSTITUTIONAL COMMISSION 698 (September 17, 1986).
[16] IV RECORD, CONSTITUTIONAL COMMISSION 803 (September 19, 1986).

prevent Congress, through future legislation, from defining when life begins other than at the time of fertilization:

> MR. DAVIDE. Precisely. So, insofar as the unborn is concerned, life begins at the first moment of conception. Therefore, there is no need to delete. **There is no need to leave it to Congress because that is a matter settled in medicine.**
>
> x x x x
>
> REV. RIGOS. Yes, we think that the word "unborn" is sufficient for the purpose of writing a Constitution, without specifying "from the moment of conception.
>
> MR. DAVIDE. I would not subscribe to that particular view because according to the Commissioner's own admission, he would leave it to Congress to define when life begins. So, Congress can define life to begin from six months after fertilization; and that would really be very, very dangerous. It is now determined by science that life begins from the moment of conception. There can be no doubt about it. **So, we should not give any doubt to Congress, too.**
>
> Thank you, Madam President. *(Applause)*[17] (Emphasis supplied)

Much of the debates, however, centered on the meaning of the phrase "from the moment of conception." It is clear from the deliberations that the intended meaning of the phrase "from the moment of conception" was fertilization or the moment the egg is fertilized by the sperm.

> REV. RIGOS. In Section 9, page 3, there is a sentence which reads:
>
> > The State shall equally protect the life of the mother and the life of the unborn from the moment of conception.
> >
> > When is the moment of conception?
>
> x x x x
>
> MR. VILLEGAS. As I explained in the sponsorship speech, **it is when the ovum is fertilized by the sperm that there is human life.** Just to repeat: first, there is obviously life because it starts to nourish itself, it starts to grow as any living being, and it is human because at the moment of fertilization, the chromosomes that combined in the fertilized ovum are the chromosomes that are uniquely found in human beings and are not found in any other living being.[18] (Emphasis supplied)

Significantly, the framers intentionally made use of the term "from the moment of conception" so that the people who will ratify the Constitution would easily understand its meaning:

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[17] IV RECORD, CONSTITUTIONAL COMMISSION 800 (September 19, 1986).
[18] IV RECORD, CONSTITUTIONAL COMMISSION 668 (September 16, 1986).

MR. TINGSON. We would like Commissioner Rigos to know that the phrase "from the moment of conception" was described by us here before with the scientific phrase "fertilized ovum." However, we figured in the committee that the phrase "fertilized ovum" may be beyond the comprehension of some people; we want to use the simpler phrase "from the moment of conception."[19]

During the deliberations, the meaning of "from the moment of conception" was *repeatedly* reaffirmed as pertaining to the fertilization of the egg by the sperm. As a necessary consequence of this definition, any drug or device that harms the unborn from the moment of fertilization is considered an abortifacient and should be banned by the State:

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

> The State shall equally protect the life of the mother and the life of the unborn from the moment of conception.

When it speaks of "from the moment of conception," does this mean when the egg meets the sperm?

MR. VILLEGAS. Yes, the ovum is fertilized by the sperm.

MR. GASCON. Therefore, that does not leave to Congress the right to determine whether certain contraceptives that we know of today are abortifacient or not because it is a fact that some of these so-called contraceptives deter the rooting of the fertilized ovum in the uterus. If fertilization has already occurred, the next process is for the fertilized ovum to travel towards the uterus and to take root. What happens with some contraceptives is that they stop the opportunity for the fertilized ovum to reach the uterus. Therefore, if we take the provision as it is proposed, these so-called contraceptives should be banned.

MR. VILLEGAS. **Yes, if that physical fact is established, then that is what we call abortifacient and, therefore, would be unconstitutional and should be banned under this provision.**[20] (Emphasis supplied)

This was further confirmed in the following exchanges:

MR. GASCON. x x x

x x x x

I mentioned that if we institutionalize the term "the life of the unborn from the moment of conception," we are also actually saying "no," not "maybe" to certain contraceptives which are already being encouraged at this point in time. Is that the sense of the committee or does it disagree with me?

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19 IV RECORD, CONSTITUTIONAL COMMISSION 669 (September 16, 1986).
20 IV RECORD, CONSTITUTIONAL COMMISSION 711 (September 17, 1986).

> MR. AZCUNA. No, Mr. Presiding Officer, because contraceptives would be preventive. There is no unborn yet. That is yet unshaped.
>
> MR. GASCON. Yes, Mr. Presiding Officer, but I was speaking more about some contraceptives, such as the intra-uterine device which actually stops the egg which has already been fertilized from taking route to the uterus. So, if we say "from the moment of conception," **what really occurs is that some of these contraceptives will have to be unconstitutionalized.**
>
> MR. AZCUNA. **Yes, to the extent that it is after the fertilization**, Mr. Presiding Officer.[21] (Emphasis supplied)

Later, Commissioner Padilla initiated moves to reword the phrase "from the moment of conception" to "from conception" to simplify the phraseology of the subject constitutional provision without deviating from its original meaning, that is, conception pertains to fertilization.[22]

The real challenge to the proponents of the subject constitutional provision, however, was the move by several members of the Commission to change the phrase "protect the life of the mother and the life of the unborn from the moment of conception" to "protect the life of the mother and the life of the unborn." In other words, there was a move to delete the phrase "from the moment of conception." Opponents of the subject constitutional provision argued that the determination of when life begins should be left to Congress to address in a future legislation where there is greater opportunity to debate the issues dealing with human personality and when it begins.[23]

After a lengthy exchange, the proponents of the subject constitutional provision scored a decisive victory when the final voting on whether to retain or delete the phrase "from the moment of conception" was held:

> THE PRESIDENT. x x x So, if the vote is "yes", it is to delete "from the moment of conception." If the vote is "no," then that means to say that the phrase "from the moment of conception" remains.[24]
>
> xxxx
>
> THE PRESIDENT. The results show 8 votes in favor and 32 against; so, the proposed Rigos amendment is lost.[25]

Hence, the phrase "from the moment of conception" was retained. Subsequently, the Padilla amendment was put to a vote. With a vote of 33 in favor, 3 against, and 4 abstentions, the Padilla amendment was approved. Thus, the present wording of

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21 IV RECORD, CONSTITUTIONAL COMMISSION 745 (September 17, 1986).
22 IV RECORD, CONSTITUTIONAL COMMISSION 801-802 (September 19, 1986).
23 IV RECORD, CONSTITUTIONAL COMMISSION 668 (September 16, 1986); IV RECORD, CONSTITUTIONAL COMMISSION 705, 708, 724 (September 17, 1986); IV RECORD, CONSTITUTIONAL COMMISSION 800 (September 19, 1986).
24 IV RECORD, CONSTITUTIONAL COMMISSION 807 (September 19, 1986).
25 IV RECORD, CONSTITUTIONAL COMMISSION 808 (September 19, 1986).

the second sentence of Article II, Section 12 of the Constitution makes use of the simplified phrase "from conception."

*Key Characteristics of Article II, Section 12*

Several important characteristics or observations may be made on the nature, scope and significance of Article II, Section 12 of the Constitution relative to the protection of the life of the unborn based on the deliberations of the Constitutional Commission.

First, the framers were unequivocal in their intent to define "conception" as the fertilization of the egg by the sperm and to accord constitutional protection to the life of the unborn from the moment of fertilization. The plain meaning of the term "conception," as synonymous to fertilization, based on dictionaries and medical textbooks, as aptly and extensively discussed by the *ponencia,* confirm this construction. In addition, petitioners correctly argue that the definition of "conception," as equivalent to fertilization, was the same definition prevailing during the 1980's or at around the time the 1987 Constitution was ratified.[26] Hence, under the rule of constitutional construction, which gives weight to how the term was understood by the people who ratified the Constitution,[27] "conception" should be understood as fertilization.

Second, the protection of the life of the unborn under Article II, Section 12 is a self-executing provision because:

(1) It prevents Congress from legalizing abortion; from passing laws which authorize the use of abortifacients; and from passing laws which will determine when life begins other than from the moment of conception/fertilization;

(2) It prevents the Supreme Court from making a *Roe v. Wade*[28] ruling in our jurisdiction; and

(3) It obligates the Executive to ban contraceptives which act as abortifacients or those which harm or destroy the unborn from conception/fertilization.

Article II, Section 12 is, thus, a direct, immediate and effective limitation on the three great branches of government and a positive command on the State to protect the life of the unborn.

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[26] Memorandum for Alliance for the Family Foundation Philippines, Inc. (ALFI) et al. (Vol. 1), pp. 41-43.

[27] *See Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317, 337-338.

[28] Supra note 10.

Third, Article II, Section 12 recognized a *sui generis* constitutional right to life of the unborn. The framers repeatedly treated or referred to the right to life of the unborn as a fundamental right and thereby acknowledged that the unborn is a proper subject of a constitutional right. That this right is founded on natural law and is self-executing further provides the unmistakable basis and intent to accord it the status of a constitutional right. However, it is *sui generis* because, unlike a person who possesses the right to life, liberty and property, the unborn's fundamental right is solely limited to the right to life as was the intention of the framers. Clearly, then, Article II, Section 12 recognized a *sui generis* right to life of the unborn from conception/fertilization and elevated it to the status of a constitutional right.

Fourth, because the unborn has been accorded a constitutional right to life from conception/fertilization under Article II, Section 12, this right falls within the ambit of the Court's power to issue rules for the protection and enforcement of constitutional rights under Article VIII, Section 5(5) of the Constitution:

> 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, x x x. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

This is *significant* because it imposes upon this Court the duty to protect such right pursuant to its rule-making powers. In recent times, the Court acknowledged that the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature under Article II, Section 16 of the Constitution, though found in the Declaration of Principles and Policies (like the subject right to life of the unborn) and not in the Bill of Rights, may be given flesh pursuant to the power of the Court to issue rules for the protection and enforcement of constitutional rights. It, thus, proceeded to promulgate the rules governing the Writ of *Kalikasan*.[29]

With *far* greater reason should the Court wield this power here because the unborn is totally defenseless and must rely wholly on the State to represent its interest in matters affecting the protection and preservation of its very life. It does not necessarily follow, however, that the Court should issue a set of rules to protect the life of the unborn like the Writ of *Kalikasan*. How the Court is to protect and enforce the constitutional right to life of the unborn, within the context of the RH Law, is the central theme of this Opinion.

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[29] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7.

With the groundwork constitutional principles in place, I now proceed to tackle the constitutionality of the RH Law and its Implementing Rules and Regulations (IRR).

*The RH Law does not contravene Article II, Section 12 of the Constitution.*

The RH Law prohibits the use of abortifacients in several provisions in consonance with Article II, Section 12 of the Constitution, to wit:

(1) Section 2:

> SEC. 2. *Declaration of Policy.* – x x x
>
> The State likewise guarantees universal access to medically-safe, **non-abortifacient**, effective, legal, affordable, and quality reproductive health care services, methods, devices, supplies **which do not prevent the implantation of a fertilized ovum** as determined by the Food and Drug Administration (FDA) and relevant information and education thereon according to the priority needs of women, children and other underprivileged sectors, giving preferential access to those identified through the National Household Targeting System for Poverty Reduction (NHTS-PR) and other government measures of identifying marginalization, who shall be voluntary beneficiaries of reproductive health care, services and supplies for free. (Emphasis supplied)

(2) Section 3:

> SEC. 3. *Guiding Principles for Implementation.* – This Act declares the following as guiding principles: x x x
>
> (d) The provision of ethical and medically safe, legal, accessible, affordable, **non-abortifacient**, effective and quality reproductive health care services and supplies is essential in the promotion of people's right to health, especially those of women, the poor, and the marginalized, and shall be incorporated as a component of basic health care;
>
> (e) The State shall promote and provide information and access, without bias, to all methods of family planning, including effective natural and modern methods which have been proven medically safe, legal, **non-abortifacient**, and effective in accordance with scientific and evidence-based medical research standards such as those registered and approved by the FDA for the poor and marginalized as identified through the NHTS-PR and other government measures of identifying marginalization: Provided, That the State shall also provide funding support to promote modern natural methods of family planning, especially the Billings Ovulation Method, consistent with the needs of acceptors and their religious convictions; x x x
>
> (j) **While this Act recognizes that abortion is illegal and punishable by law**, the government shall ensure that all women needing care for post-

abortive complications and all other complications arising from pregnancy, labor and delivery and related issues shall be treated and counseled in a humane, nonjudgmental and compassionate manner in accordance with law and medical ethics; (Emphasis supplied)

(3) Section 4:

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

(a) ***Abortifacient*** **refers to any 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.**

x x x x

(e) *Family planning* refers to a program which enables couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and to have access to a full range of safe, affordable, effective, **non-abortifacient** modern natural and artificial methods of planning pregnancy.

x x x x

(l) *Modern methods of family planning* refers to safe, effective, **non-abortifacient** and legal methods, whether natural or artificial, that are registered with the FDA, to plan pregnancy.

x x x x

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

(4) Section 9:

SEC. 9. *The Philippine National Drug Formulary System and Family Planning Supplies.* – The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, **non-abortifacient** and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting 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)

The key provision is found in Section 4(a) which defines an "abortifacient" as "any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA." That last phrase which effectively bans contraceptives that prevent the fertilized ovum from reaching and being implanted in the mother's womb guarantees that the fertilized ovum will not be harmed or destroyed from the moment of fertilization until its implantation. Thus, the RH Law protects the unborn from conception/fertilization in consonance with the Constitution.

As earlier noted, the RH Law is to be commended for its zealous protection of the life of the unborn from conception/fertilization. It repeatedly emphasizes that the contraceptives which will be made available under the law should be non-abortifacient. It prohibits the use of abortifacients and penalizes the use thereof. Thus, it cannot be said that the law violates Article II, Section 12 of the Constitution.

*The IRR's definition of "abortifacient" and "contraceptive" contravenes Article II, Section 12 of the Constitution and the RH Law itself.*

Petitioners Alliance for the Family Foundation Philippines, Inc. (ALFI) *et al*. argue:

***9.1.9*** The IRRs, which have been signed by the Secretary of Health himself, among others, veer away from the definition of the term "abortifacient" in SEC. 4 (a) of the RH Law, such that in the IRRs, the term has, in effect, been re-defined.

***9.1.10*** Rule 3 – Definition of Terms, Section 3.01 (a) of the IRRs, as signed, states:

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

> And **"primarily"** means the drug or device has **no other known effect aside from abortion.** *(footnote 14, IRRs)*

***9.1.11*** xxxx

***9.1.12*** One can readily spot how the insertion of the word "primarily" has radically, if not deceptively, changed the meaning of "Abortifacient" under the RH Law. As explained above, the primary mechanism of action of contraceptives is really to prevent ovulation or fertilization, but this does not happen all the time because in some instances break-through ovulation occurs and the built-in and back-up abortive action sets in. With the definition under the IRR, abortifacient contraceptives will not be classified as abortifacients because they do not "primarily" and "solely" cause abortion or are abortive. Well, this should not be surprising anymore because as indicated in the explanatory note of the IRRs, the only goal is to save [the] mother's lives and to reduce maternal mortality rate, without any reference to saving the life of the unborn child or decreasing infant mortality rate.

***9.1.13.*** Clearly, but unfortunately, **the true legislative intent is:** for the State to fund and fully implement the procurement and widespread dissemination and use of all forms of contraceptive products, supplies and devices, **even if they are abortifacients and harmful to the health of women.** This goes counter to the constitutional intent of Section 12, Article II which is to afford protection to the unborn child from the incipient stage of the existence of life, that is, from the very moment of conception or fertilization, and to give equal protection to the life of the mother and the life of the unborn from conception.[30]

I agree.

Section 3.01(a) of the IRR defines "abortifacient" as:

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

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

On the other hand, the RH Law defines "abortifacient" thus:

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

> (a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of

[30] Memorandum for Petitioners ALFI, et al. (Vol. 1), pp. 168-169.

> the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA.

Clearly, the addition of the word "primarily" in the IRR is *ultra vires* for it amends or contravenes Section 4(a) of the RH Law.

More importantly, I agree that the insertion of the qualifier "primarily" will open the floodgates to the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution. As defined in the IRR, a drug or device is considered an abortifacient if it "primarily" induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb; where "primarily" means that the drug or device has no other known effect aside from abortion. In other words, under the IRR, a contraceptive will only be considered as an "abortifacient" if its sole known effect is abortion or, as pertinent here, the prevention of the implantation of the fertilized ovum.

Consequently, a drug or device which (a) prevents fertilization, (b) but does not provide a 100% guarantee of such prevention, and (c) has a fail-safe mechanism which will prevent the implantation of the fertilized ovum in case fertilization still occurs will not be considered an "abortifacient" because the known effect thereof is not solely prevention of implantation since (1) it primarily prevents fertilization and (2) *only secondarily* prevents the implantation of the fertilized ovum in case fertilization still occurs.

However, a drug or device that cannot provide a 100% guarantee that it will prevent fertilization **and** has a fail-safe mechanism which prevents implantation of the fertilized ovum (or harming/destroying the fertilized ovum in any way) if fertilization occurs is unconstitutional under Article II, Section 12 and must be banned by the State. In more concrete terms, if a drug or device provides only a 90% guarantee of prevention of fertilization, then there is a 10% chance that fertilization will still occur and the fertilized ovum would be destroyed by the fail-safe mechanism of the contraceptive.

*We cannot play the game of probabilities when life is at stake.* The destruction or loss of life is permanent and irrevocable. Our constitutional mandate is to protect the life of the unborn from conception/fertilization. We cannot protect this life 90% of the time and allow its destruction 10% of the time. We either protect this life or we do not. There is nothing in between.

If we are to truly give flesh to the constitutional precept that the life of the unborn from conception/fertilization is precious, sacred and inviolable, all reasonable doubts should be resolved in favor of the protection and preservation of the life of the unborn, and any probability of destruction or loss of such life should

be absolutely proscribed. The supreme law of the land commands no less.

For parallel reasons, the IRR's definition of "contraceptive" under Section 3.01(j) is unconstitutional because of the insertion of the qualifier "primarily," to wit:

> Section 3.01 For purposes of these Rules, the terms shall be defined as follows:
>
> xxxx
>
> j) *Contraceptive* refers to any safe, legal, effective and scientifically proven modern family planning method, device, or health product, whether natural or artificial, that prevents pregnancy but does not **primarily** destroy a fertilized ovum or prevent a fertilized ovum from being implanted in the mother's womb in doses of its approved indication as determined by the Food and Drug Administration (FDA). (Emphasis supplied)

Although the RH Law does not provide a definition of "contraceptive," a reasonable and logical deduction is that "contraceptive" (or allowable contraceptive to be more precise) is the opposite of "abortifacient" as defined under the RH Law. This seems to be the tack adopted by the IRR in defining "contraceptive." However, the IRR's definition of "contraceptive" again added the qualifier "primarily." For similar reasons with the previous discussion on the IRR's definition of "abortifacient," this definition of "contraceptive" opens the floodgates to the approval of contraceptives which are actually abortifacients because of their fail-safe mechanism. Hence, the qualifier "primarily" in Section 3.01(j) is, likewise, void.

In view of the foregoing, the word "primarily" in Section 3.01(a) and (j) of the IRR should be declared void for (1) contravening Section 4(a) of the RH Law and (2) violating Article II, Section 12 of Constitution.

*Within the framework of implementation of the RH Law, it is necessary for this Court to exercise its expanded jurisdiction and power to issue rules for the protection and enforcement of constitutional rights in order to adequately protect the right to life of the unborn.*

The Court should not limit its scrutiny to the constitutional validity of the RH Law and its IRR. This is because the right to life of the unborn from conception/fertilization is a constitutional right properly within the ambit of the Court's power to issue rules for the protection and enforcement of constitutional

rights under Article VIII, Section 5(5) of the Constitution. In *Echegaray v. Secretary of Justice*,[31] the Court described this power to issue rules as one of the innovations of the present Constitution to *expand* the powers of the Court:

> The *1987 Constitution* molded an even *stronger and more independent judiciary*. Among others, *it enhanced the rule making power of this Court*. Its Section 5(5), Article VIII provides:
>
> xxx xxx xxx
>
> "Section 5. The Supreme Court shall have the following powers:
>
> xxx xxx xxx
>
> (5) *Promulgate rules concerning the protection and enforcement of constitutional rights*, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. *Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court*."
>
> *The rule making power of this Court was expanded.* This Court for the *first time* was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the *first time* the power to disapprove rules of procedure of special courts and quasi-judicial bodies. x x x[32]

Viewed in light of the broad power of the Court to issue rules for the protection and enforcement of constitutional rights, the power to disapprove the rules of procedure of quasi-judicial bodies is *significant* in that it implies the power of the Court to look into the sufficiency of such rules of procedure insofar as they adequately protect and enforce constitutional rights. Moreover, the power to disapprove the aforesaid rules of procedure necessarily includes or implies the power to approve or modify such rules or, on the one extreme, require that such rules of procedure be issued when necessary to protect and enforce constitutional rights. 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 exist penumbras of this power that the Court may exercise in order to protect and enforce constitutional rights.

Furthermore, the power to determine when the aforesaid powers may be exercised should be understood in conjunction with the Court's expanded jurisdiction, under Article VIII, Section 1 of the Constitution, to determine

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31 361 Phil. 73 (1999).
32 Id. at 88.

"whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Taken together, the expanded jurisdiction of the Court and the power to issue rules for the protection and enforcement of constitutional rights provide the bases for the Court (1) to look into the sufficiency of safeguards in the implementation of the RH Law insofar as it will adversely affect the right to life of the unborn, and (2) to issue such orders as are necessary and essential in order to protect and enforce the constitutional right to life of the unborn. This is especially true in this case because the expanded powers of the Court was granted to it to prevent a repeat of the bitter experiences during martial law years when rampant human rights violations occurred. Verily, the expanded powers were conferred on this Court at a great price and were given for a clear purpose. Here, a more basic right—the right to life of the unborn— is at stake; the right from which all human rights emanate.

It should come as no surprise that at a time our nation is set to embark on a great social experiment, where the full machinery of the State will be utilized to implement an aggressive national family planning policy, the Court should find itself reflecting on the threshold of its constitutionally-mandated powers. The Court is beckoned to courageously sail forth to the new frontiers of its powers in order to stem the tide of oppression, *nay* destruction, against a *most* vulnerable group that may be trampled upon by this great social experiment. For can there be any group more vulnerable than the unborn?

As they say, we stand on the shoulders of giants. They have blazed the trail for this Court in order that we may see clearly what we *can* and *ought* to do in defense of the life of the unborn. They have seen fit to equip this Court with expanded powers in preparation for a future that they must have known would involve moments of great clashes between the juggernaut of majoritarian interests and the politically powerless and marginalized. *We are in that moment.* And we ought to firmly stand by the legacy and solemn charge that the framers of, and the people who ratified our Constitution conferred upon us.

Against this backdrop, I delineate what the Court in the exercise of its expanded jurisdiction and power to issue rules for the protection and enforcement of constitutional rights is mandated to do in defense of the life of the unborn within the framework of implementation of the RH Law.

*The Food and Drug Administration (FDA) should be directed to issue the proper rules of procedure that will sufficiently safeguard the right to life of the unborn.*

Preliminarily, central to the protection of the right to life of the unborn is the proper determination, through screening, testing and/or evaluation, by the FDA, using the standard under the Constitution, as adopted under the RH Law, on what will constitute allowable contraceptives under the RH Law. During the oral arguments of this case, I delved upon the crucial task that lay ahead for the FDA:

> Justice Del Castillo:
> Counsel, just a few follow-up questions on contraceptives.
>
> Atty. Noche:
> Yes, Your Honor.
>
> Justice Del Castillo:
> You have identified contraceptives as abortifacient.
>
> Atty. Noche:
> Yes, Your Honor.
>
> Justice Del Castillo:
> There are so many contraceptives and the respondents have taken the view that not all are abortifacients. So to resolve this issue, why don't you identify, why don't you name these contraceptives and then let's test them if they are abortifacient then the issue is settled, so instead of making generalization that all contraceptives are abortifacient, don't you think that the proper course of action to take is to identify all these because practically all drugs are abortifacients, even a simple aspirin, so these are [as a] matter of degree. So, perhaps those that would cause tremendous harm and maybe we can ban them. But unless we have not identified them just to say that all abortifacients, don't' you think that…….
>
> Atty. Noche:
> If Your Honor, please, hormonal contraceptives, what we're saying is that hormonal contraceptives which include, you know, the pills, and the injectables, and intrauterine devices, Your Honor, and the patches, Your Honor, implants they're proven to be abortifacients, Your Honor. Vasectomy, sterilization procedures, Your Honor, they are also referred to as contraceptives, Your Honor, but they are not abortifacients because they don't contain hormones, Your Honor.
>
> Justice Del Castillo:
> No, I was suggesting that because the respondents would also come out with their own authorities, so to resolve it once and for all, let's test them.
>
> Atty. Noche:
> If Your Honor, please, we also have an objection about giving, of course, I'm sure, Your Honor, I've been referring to delegating the authority to the Food and Drug Administration, so we have a problem with that, Your Honor, because, I mean, these hormonal contraceptives are proven to be abortifacients, Your Honor, and…. (interrupted)

Justice Del Castillo:

I am not just referring to the Food and Drug Administration. My point is, let's put it to test because this is just x x x evidentiary, it's a matter of fact, we cannot make generalizations. [They're] saying that these are not abortifacients, you are saying x x x that they are abortifacients, then let's prove it. That is just my suggestion.

Atty. Noche:

If Your Honor, please, may I, you know, bring out the very important point that we have always tried to bring out, Your Honor. Section 12, otherwise, we forget this, Section 12, Article II mandates the protection of the unborn from conception. And that protection is not just from death but from any risks or threat of harm, or injury or any form or degree, remote or direct, momentary or permanent and it has proven already that anything, Your Honor, that you introduce into the body that disrupts the, you know, workings in the uterus or the physiology in the uterus is harmful to the fertilized ovum so….. (interrupted)

Justice Del Castillo:

Yes, Counsel, but the protection comes in only after, if I may grant you, the fertilization. But before that, the unborn is not protected, the unborn is protected from conception so before that it's not [a] regulated act.

Atty. Noche:

If Your Honor, please, before fertilization there is no person to speak of.

Justice Del Castillo:

Exactly.

Atty. Noche:

There is no fertilized ovum to speak of, there is no unborn that needs any protection, Your Honor, at least, under Section 12. So, really the protection that we are referring to under Section 12 is protection that starts from conception. That is when we say they're already a person in that fertilized ovum that the Constitution mandates, that the State protects, Your Honor.

Justice Del Castillo:

I even concede that upon the meeting of the egg and the sperm x x x there is life already, it should be protected, I concede that.

Atty. Noche:

Thank you, very much, Your Honor, for saying that because that's really life there.

Justice Del Castillo:

Thank you, Counsel.[33]

Under Section 4(a) of the RH Law, the FDA is charged with the task of determining which contraceptives are not abortifacients:

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

[33] TSN, July 9, 2013, pp. 49-51.

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

The drugs or devices, which will be approved by the FDA, will then be included in the National Drug Formulary and Essential Drugs List as provided under Section 9 of the RH Law:

> SEC. 9. *The Philippine National Drug Formulary System 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.

Contrary to the interpretation of petitioners, Section 9 does not automatically mandate the inclusion of hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies in the National Drug Formulary and Essential Drugs List. This provision should be read in relation to Section 4(a) of the RH Law which requires the FDA to first determine whether the subject contraceptives are non-abortifacients, among other standards (*e.g.*, safe, effective). The law should be construed in such a way as to avoid a declaration of unconstitutionality.

The IRR provides the following guidelines for such determination, *viz*:

> **Section 7.04** *FDA Certification of Family Planning Supplies.* The FDA must certify that a family planning drug or device is not an abortifacient in dosages of its approved indication (for drugs) or intended use (for devices) prior to its inclusion in the EDL. The FDA shall observe the following guidelines in the determination of whether or not a drug or device is an abortifacient:
>
> a) As defined in Section 3.01 (a) of these Rules, a drug or device is deemed to be an abortifacient if it is proven to primarily[34] induce abortion or the destruction of a fetus inside the mother's womb or the

[34] As previously discussed, the word "primarily" is void.

prevention of the fertilized ovum to reach and be implanted in the mother's womb;

b) The following mechanisms do not constitute abortion: the prevention of ovulation; the direct action on sperm cells prior to fertilization; the thickening of cervical mucus; and any mechanism acting exclusively prior to the fertilization of the egg by the sperm;

c) In making its determination, the FDA shall use the best evidence available, including but not limited to: meta-analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations;

d) In the presence of conflicting evidence, the more recent, better-designed, and larger studies shall be preferred, and the conclusions found therein shall be used to determine whether or not a drug or device is an abortifacient; and

e) Should the FDA require additional expertise in making its determination, an independent evidence review group (ERG) composed of leading experts in the fields of pharmacodynamics, medical research, evidence-based medicine, and other relevant fields may be convened to review the available evidence. The FDA shall then issue its certification based on the recommendations of the ERG.

It is only proper for the Court to recognize that the FDA possesses the requisite technical skills and expertise in determining whether a particular drug or device is an abortifacient. It is also only proper that the Court accords deference to this legislative delegation of powers to the FDA for this purpose. However, for obvious reasons, the unborn cannot appear, on its behalf, to represent or protect its interest, bearing upon its very right to life, when the FDA proceeds to make such a determination.

Within this framework of implementation, and given the unique status of the unborn and the exceptional need to protect its right to life, the Court *must* step in by directing the FDA to issue the *proper* rules of procedure in the determination of whether a drug or device is an abortifacient under the RH Law. Such rules must *sufficiently* safeguard the right to life of the unborn. As a penumbra of its power to issue rules to protect and enforce constitutional rights and its power to disapprove rules of procedure of quasi-judicial bodies, the Court has the power and competency to mandate the minimum requirements of due process in order to sufficiently safeguard the right to life of the unborn in the proceedings that will be conducted before the FDA. This is in line with the declared policy and numerous provisions of the RH Law according *utmost* respect and protection for the right to life of the unborn.

In determining whether a drug or device is an abortifacient, the FDA will necessarily engage in a quasi-judicial function. It will determine whether a set of

facts (active properties or mechanisms of a drug or device) comply with a legal standard (definition of non-abortifacient) which will ultimately bear upon the right to life of the unborn. Considering that quasi-judicial bodies involved in, say, rate-fixing follow the due process requirements of publication, notice and hearing, where the lesser right to property is involved, then with *far* greater reason should the proceedings before the FDA require publication, notice and hearing.

Any erroneous determination the FDA makes can result to the destruction or loss of the life of the unborn. Plainly, the life and death of countless, faceless unborns hang in the balance. Thus, the determination should be made with *utmost care* where the interest of the unborn is *adequately represented.*

Consequently, the Solicitor General should be mandated to represent the unborn and the State's interest in the protection of the life of the unborn from conception/fertilization in the proceedings before the FDA. If the Solicitor General is made to represent the State's interest in, say, cases involving declaration of nullity of marriage, then, again, with *far* greater reason should it be made to represent the unborn and State's interest in protecting the life of the unborn. Interested parties should also be allowed to intervene in the proceedings for all persons have a valid and substantial interest in the protection of the right to life of the unborn under the concept of intergenerational responsibility.[35]

In making the aforesaid determination, the FDA should follow the strict standards laid down in the Constitution, as adopted in the RH Law, as to what constitute allowable contraceptives. The IRR has provided guidelines as to what constitute allowable contraceptives but these guidelines should be applied only insofar as they do not contravene the standard laid down in the Constitution. Given the advances in science and medicine, drugs or devices may be developed which satisfy the guidelines in the IRR but still result to the destruction of the unborn from fertilization. (This was the case with the contraceptive with a fail-safe mechanism which required the voiding of the subject qualifiers in the IRR's definition of terms, as previously discussed.)

*The Constitution is always the polestar*; the drug or device should not harm or destroy the life of the unborn from conception/fertilization. Necessarily, the rule of evidence to be followed by the FDA, in consonance with the Constitution, is that, in weighing the evidence as to whether a drug or device is an abortifacient, all reasonable doubt should be resolved in favor of the right to life of the unborn from conception/fertilization.

Finally, the other requirements of administrative due process laid down in the seminal case of *Ang Tibay v. The Court of Industrial Relations*[36] should be followed.

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35 *See Oposa v. Factoran*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 802-803.

36 69 Phil. 635 (1940).

The other details of the rules of procedure should be left to the sound discretion of the FDA. However, the FDA must ensure that these details sufficiently safeguard the life of the unborn.

In sum, I find that the Court should issue an order:

(1) directing the FDA to formulate the rules of procedure in the screening, evaluation and approval of all contraceptives that will be used under the RH Law,

(2) the rules of procedure shall contain the following minimum requirements of due process:

(a) publication, notice and hearing,

(b) the Solicitor General shall be mandated to represent the unborn and the State's interest in the protection of the life of the unborn,

(c) interested parties shall be allowed to intervene,

(d) the standard laid down in the Constitution, as adopted under the RH Law, as to what constitute allowable contraceptives shall be strictly followed, *i.e.*, those which do not harm or destroy the life of the unborn from conception/fertilization,

(e) in weighing the evidence, all reasonable doubts shall be resolved in favor of the right to life of the unborn from conception/fertilization, and

(f) the other requirements of administrative due process, as summarized in *Ang Tibay*, shall be complied with.

The FDA should be directed to submit these rules of procedure, within 30 days from receipt of the Court's decision, for the Court's appropriate action.

*The FDA should be directed to inform this Court as to whether the contraceptives that it previously approved and is currently available for use and distribution in our jurisdiction comply with the constitutional standard of allowable contraceptives.*

In his Memorandum, the Solicitor General stated that—

> 49. There are currently fifty-nine (59) contraceptive drugs and seven (7) intrauterine devices duly approved for sale by the FDA and currently available in the market. x x x[37]

However, the Solicitor General did not categorically state that these drugs and devices were screened, evaluated and/or tested under the standard laid down in Article II, Section 12 of the Constitution, as adopted under Section 4(a) of RH Law. The apparent reason for this seems to be that these drugs and devices were screened, evaluated and/or tested by the FDA *prior to* the enactment of the RH Law and the ruling that the Court now categorically makes in this case.

Plainly, it would not make sense to impose strict rules of procedure for the evaluation of contraceptives that will be used under the RH Law while allowing a *possible* continuing violation of the Constitution relative to contraceptive drugs and devices that were previously approved by the FDA and are currently being used and/or distributed in our jurisdiction.

There is, thus, an *urgent necessity* to determine if the aforesaid contraceptive drugs and devices comply with the Constitution and RH Law, *i.e.* they do not harm or destroy the unborn from conception/fertilization, in general, and they do not prevent the implantation of the fertilized ovum, in particular. Also, of particular significance is whether the FDA evaluated the currently available contraceptive drugs and devices against the standard laid down, as discussed in a previous subsection, concerning unallowable contraceptives which (1) do not provide a 100% guarantee of preventing fertilization and (2) has a fail-safe mechanism which destroys the fertilized ovum if fertilization occurs (*e.g.*, prevents the implantation of the fertilized ovum on the uterus).

Thus, the FDA should be ordered to immediately inform this Court whether its previously approved and the currently available contraceptive drugs and devices in our jurisdiction *were* screened, evaluated and/or tested against the afore-discussed general and specific standards. It should be emphasized that the FDA is *not* being asked to re-screen, re-evaluate or re-test the aforesaid contraceptive drugs and devices but only to inform this Court if they *were* screened, evaluated and/or tested against the constitutional and statutory standards that the Court upholds in this decision. Thus, this will not take an inordinate amount of time to do considering that the files should be readily available with the FDA. This information will allow the Court to take immediate remedial action in order to protect and defend the life of the unborn from conception/fertilization, if the circumstances warrant. That is, if the contraceptive drugs or devices *were not* screened, evaluated and/or tested against the constitutional and statutory standards that the Court upholds in this decision, then it would be necessary to suspend their availability in the market, as a precautionary measure, in order to protect the right

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[37] Memorandum for the Solicitor General, p. 17.

to life of the unborn *pending* the proper screening, evaluation and/or testing through the afore-discussed rules of procedure that the FDA is directed to issue..

It should be noted that Section 7.05 of the IRR *effectively* and *impliedly* mandates that these existing drugs and devices be screened, evaluated and/or tested *again* by the FDA against the standard or definition of abortifacient under Section 4(a) of the RH Law. But the serious flaw in this procedure is that, in the meantime, the aforesaid drugs and devices shall remain available in the market pending the FDA's certification, to wit:

> **Section 7.05** *Drugs, Supplies, and Products with Existing Certificates of Product Registration.* Upon the effectivity of these Rules, all reproductive health care drugs, supplies, and products that have existing Certificates of Product Registration (CPRs) from the FDA shall be provided certifications stating that they do not cause abortion when taken in dosages for their approved indications.

Thus, if such drugs and devices are later determined by the FDA to be an abortifacient under the standard laid down in the Constitution, as adopted under the RH Law, then the loss or destruction of many unborn may have already resulted or taken place. As previously noted, the proper course of action is to immediately determine if they *were* screened, evaluated and/or tested against the afore-discussed general and specific constitutional and statutory standards. And, if not, to immediately suspend their availability in the market, as a precautionary measure, in order to safeguard the right to life of the unborn pending the proper screening, evaluation and/or testing through the afore-discussed rules of procedure that the FDA is directed to issue.

The life of the unborn should not be placed at risk any minute longer.

*The DOH in coordination with all concerned government agencies should be directed to formulate the rules and regulations or guidelines that will govern the purchase and distribution/ dispensation of the product or supply which will be covered by the FDA's certification, under Section 9 of the RH Law, that said product and supply is made available on the condition that it is not to be used as an abortifacient.*

Section 9 of the RH Law states—

> SEC. 9. *The Philippine National Drug Formulary System and Family Planning Supplies.* – The National Drug Formulary shall include hormonal

> contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, **any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient**.
>
> These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: *Provided, further,* That the foregoing offices shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent. (Emphasis supplied)

Preliminarily, the necessity of imposing proper rules of procedure, which sufficiently safeguards the right to life of the unborn, in the FDA's determination of what will be considered allowable contraceptive drugs and devices upon implementation of the RH Law, can be better appreciated if viewed within the context of Section 9 of the RH Law, as afore-quoted. Once the FDA approves contraceptive drugs and devices like hormonal contraceptives, intrauterine devices, injectables and other family planning products and supplies, they will be included in the Essential Drugs List (EDL). As manifested by the Solicitor General, only drugs and medicines found in the EDL/Philippine National Drug Formulary System (PNDFS) may be dispensed (whether for free or for a reduced amount) by public health care facilities.[38] *These contraceptive drugs and devices, thus, become widely and easily accessible to the public.* In fact, the IRR devolves the distribution of these contraceptives up to the *barangay* level with the DOH as the lead agency tasked with its procurement and distribution. Thus, an erroneous determination by the FDA has an *immediate* and *widespread* impact on the right to life of the unborn.

However, there is another even more crucial aspect in the implementation of the RH Law which has *far* greater impact on the right to life of the unborn than the FDA's determination of what are allowable contraceptives. It is found in the *proviso* of Section 9 which states "any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient." In other words, under this section, products and supplies (hereinafter "subject products and supplies") which are abortifacients (or have abortifacient properties) will also be included in the EDL *provided* that these products and supplies will not be used as abortifacients as certified by the FDA.

I share the view of the *ponencia* that the aforesaid certification is empty and absurd. Such certification cannot guarantee that the subject products and supplies

[38] Id. at 7.

will not be used as abortifacients. The *ponencia* modifies the phrase from "it is not to be used" to "it cannot be used" in order to protect the right to life of the unborn.

With due respect, I am of the view that the change in wording will not alter the result. The certification is of limited value. Even with the change in wording, there will be no guarantee that the subject products and supplies will not be used as abortifacients. I submit that the proper area that should be strictly scrutinized is the implementing rules and regulations of Section 9 relative to the purchase and distribution of the subject products and supplies.

But before going to that, I find it necessary to discuss the rationale of this *proviso* in Section 9. The Senate Journal of October 8, 2012 summarizes the discussions leading to its final version, *viz*:

> On page 9, line 8 of the bill, after the word "PRACTICE" and the period (.), Senator Lacson proposed the insertion of a new sentence to read: FOR THE PURPOSE OF THIS ACT, ANY FAMILY PLANNING PRODUCT OR SUPPLY INCLUDED OR TO BE INCLUDED IN THE ESSENTIAL DRUG LIST MUST HAVE A CERTIFICATION FROM THE FOOD AND DRUG ADMINISTRATION (FDA) OF THE PHILIPPINES THAT SAID PRODUCT AND SUPPLY HAS NO ABORTIFACIENT OR ABORTICIDE EFFECT.
>
> Senator Cayetano (P) expressed willingness to accept the amendment, subject to style, but she explained that there are certain medications which are effectively abortifacient but are not used for such purpose. These medications, she explained, cannot be simply banned because they are necessary drugs for purposes for which they were introduced and are prescribed **under very strict guidelines by a medical practitioner**.
>
> She suggested that an amendment be made to require the issuance of a certification that such drugs should be used for their intended medical purpose and not as abortifacient.
>
> Citing another example, Senator Cayetano (P) said that a particular drug is being prescribed to teenagers to treat the breakout of acne, provided an assurance is given that the patient is not pregnant or otherwise sexually active because it could cause severe physical abnormality to a fetus like being born without limbs. She noted that the said drug could not be banned because it has to be used for an intended purpose.
>
> Senator Lacson expressed apprehension that a woman who has acne and wishes to have an abortion may take advantage of the essential drug being provided by the government to avail of its abortive side effect.
>
> Senator Cayetano (P) agreed with Senator Lacson that the said essential medicine should not be used as abortifacients. However, she said that the medical consultants present in the gallery point out that a number of drugs with similar effect are actually available in the market and banning these drugs could pose a great danger as they are being prescribed for a particular purpose. In addition to the literature that come with the drugs, she suggested that stronger

warnings be made by health professionals that in no case shall these drugs be prescribed and made available as abortifacients.

Upon query of Senator Lacson, Senator Cayetano (P) replied that these drugs that are prescribed to treat very serious medical conditions have been available in the market for the longest time such that withdrawing them from the market would be very detrimental to the health system in the country. For instance, she said that *Oxytocin* is used to induce labor in conditions necessitating that the baby be delivered right away, like in cases when the baby's umbilical cord has encircled his/her neck. She said that *Oxytocin* is actually intended to save a baby's life; thus, it should not be given to a two-month pregnant woman. She reiterated that withdrawing an essential medicine such as *Oxytocin* from the market would totally debilitate the maternity health care system.

Asked how it could be ensured that such and similar drugs would not be used as abortifacients. Senator Cayetano (P) replied that a health professional who prescribes a drug such as *Oxytocin* to a woman who is in her first trimester of pregnancy is clearly prescribing it as an abortifacient and should therefore be held liable under the Revised Penal Code.

Asked whether the government would be providing drugs such as *Oxytocin*. Senator Cayetano (P) said that health care providers involved in childbirth have expressed their desire to have access to such drugs because these are essential medicines that could actually improve maternal mortality rate since it could enable them to immediately save the life of a child. However, she underscored the importance of ensuring **that the FDA would be very strict on its use.**

At this juncture, Senator Sotto asked Senator Lacson what his particular proposed amendment would be, Senator Lacson replied that he would like to insert a provision, subject to style, that would ensure that the drugs cannot be used as abortifacients but they can be used for the purpose for which they were introduced in the market. Senator Sotto suggested that the Body be presented with the actual text of the amendment before it approves it. (Emphasis supplied)

As can be seen, the purpose of including the subject products and supplies in the EDL is their importance in treating certain diseases and/or their use as life-saving drugs. Yet, at the same time, these products and supplies can be used as abortifacients.

The inclusion of these products and supplies in the EDL, under Section 9 of the RH Law, will necessarily present numerous challenges. On the one hand, the State has a substantial interest in making available the subject products and supplies in order to treat various diseases and, in some instances, these products and supplies are necessary to save lives. On the other hand, by allowing the subject products and supplies to be included in the EDL, the right to life of the unborn may be jeopardized if access to these products and supplies are easily obtained by unscrupulous individuals.

The answer to the problem was touched on during the legislative deliberations. It lies in the *strict* regulation of these products and supplies. The IRR states:

> **Section 8.03** *Review of Existing Guidelines.* Within thirty (30) days from the effectivity of these Rules, the DOH shall review its existing guidelines for the procurement and distribution of reproductive health supplies and products including life-saving drugs, and shall issue new guidelines that are consistent with these Rules.
>
> x x x x
>
> **Section 8.08** *Logistics Management.* The DOH shall be responsible for the transportation, storage, and distribution of reproductive health products and supplies to their respective destinations. Upon delivery to the local government units, the respective provincial, city, and/or municipal health officers shall assume responsibility for the supplies and shall ensure their prompt, continuous, and equitable distribution to all the applicable hospitals, health centers, or clinics within their respective areas of responsibility, taking into consideration existing storage facilities and other factors that may hinder the effective distribution/use of the said supplies.
>
> The DOH shall designate a regional officer to oversee the supply chain management of reproductive health supplies and/or health products in his or her respective area, as assigned by the DOH. The officer shall promote speedy and efficient delivery of supplies, with the end goal of expedited distribution of quality-checked health products to the local government units. Towards this end, innovations on logistics and supply management, such as direct delivery of goods to the points of distribution, consistent with the intent and scope of these Rules shall be encouraged.
>
> *Provided, That* where practicable, the DOH or LGUs may engage civil society organizations or private sector distributors to accomplish the intent of this provision subject to the provisions of applicable rules and regulations.
>
> Within sixty (60) days from the effectivity of these Rules, the DOH shall issue guidelines for the implementation of this provision.
>
> **Section 8.09** *LGU-initiated Procurement.* An LGU may implement its own procurement, distribution and monitoring program consistent with these Rules and the guidelines of the DOH.

Clearly, then, the primary responsibility for the regulation of the subject products and supplies lies with the DOH. It is not certain whether the DOH has issued the rules and regulations relative to the purchase and distribution of these products and supplies. The Temporary Restraining Order (TRO) issued by this Court may have pre-empted the issuance of the subject guidelines relative to the purchase and distribution of these products and supplies.

But, again, pursuant to the expanded jurisdiction of this Court and as a penumbra of its power to issue rules for the protection and enforcement of the

right to life of the unborn as well as the exceptional need to protect such life, the Court can require that, in the promulgation by the DOH of the subject rules and regulations or guidelines, certain minimum requirements of due process shall be followed.

I find that, under these premises, publication, notice and hearing should precede the issuance of the rules and regulations or guidelines which will govern the purchase and distribution of the subject products and supplies. In other words, there should be public hearings and/or consultations. The Solicitor General should be mandated to represent the unborn and the State's interest in the protection of the life of the unborn in these proceedings before the DOH. And interested parties should be allowed to intervene.

Concededly, the DOH shall issue the rules and regulations or guidelines pursuant to its quasi-legislative (not quasi-judicial) powers, however, again, there is no obstacle to requiring that this rule-making process be subjected to a higher degree of due process, considering that the requirements of publication, notice and hearing are mandated in, say, the issuance of tax regulations where the lesser right to property is involved. With *far* greater reason should publication, notice and hearing be mandated because the subject rules will ultimately impact the right to life of the unborn. Also, while the Court cannot order the DOH to submit the subject rules for the Court's appropriate action since it involves a quasi-legislative function, there is nothing to prevent an aggrieved party from challenging the subject rules upon its issuance, if the circumstances warrant, based on grave abuse of discretion under the Court's expanded jurisdiction.

The rules and regulations or guidelines should provide *sufficient detail* as to how the subject products and supplies will be purchased and distributed or dispensed: what these products and supplies are, who shall be authorized to purchase them; who shall be authorized to store them; who shall be authorized to distribute or dispense them; the limits of what can be distributed or dispensed by particular individuals or entities; how the distribution or dispensation shall be strictly regulated; how accountability shall be enforced; and so forth.

Admittedly, the formulation of the proper rules and regulations or guidelines will necessarily present numerous challenges. The possible difficulties were already brought out in the afore-cited legislative deliberations.

Take the example of the girl with acne. The drug that is needed to treat the acne is an abortifacient. Several challenges will face the regulator in this regard. If the drug is given to her by prescription, nothing will prevent the girl, upon purchasing the drug, to give such drug to her pregnant friend who intends to have an abortion. One option that the regulator has is to require that the drug be personally administered by her (the girl's) physician so that there is no danger that the drug could be misused by the girl. The regulator must weigh whether the

protection of the life of the unborn is greater than the inconvenience imposed on the girl of having to frequent the clinic of her physician so that the drug can be personally administered to her. Here, the answer is obvious although there may be other means of regulation that can achieve the same end. Or take the example of health workers being given life-saving drugs which may also be used as abortifacients. The regulator now faces the challenge of how to make sure that the health worker does not abuse the life-saving drugs that will be placed in his or her control and possession. This would involve, among others, strict monitoring and inventory procedures.

I do not intend to provide definite answers to the challenges that will face regulators relative to the regulation of the subject products and supplies. My goal is a modest one: to point out the difficulty and complexity of the problem of regulating these products and supplies. This provides greater reason why a higher level of due process is necessary in the proceedings which will result to the issuance of the rules and regulations or guidelines relative to the purchase and distribution or dispensation of the subject products and supplies. For very easily, given the complexity or difficulty of the problem of regulation, the interests of the unborn may be relegated to the sidelines.

In fine, the afore-discussed minimum due process requirements are the only meaningful way to give effect to the constitutional right to life of the unborn from conception/fertilization under the premises. It is worth repeating, as elsewhere stated, that the unborn cannot represent itself in the DOH's rule-making process which will ultimately bear upon its very right to life. Without the utmost care, transparency and proper representation of the unborn in the DOH's proceedings, which will result to the issuance of rules and regulations or guidelines on the purchase and distribution of the subject products and supplies, it is not difficult to discern how easily the right to life of the unborn may be trampled upon.

Pending the issuance and publication of these rules by the DOH, the TRO insofar as the *proviso* in Section 9 of the RH Law, as implemented by Section 7.03[39] of the IRR, relative to the subject products and supplies, which are made available on the condition that they will not be used as an abortifacient, should remain in force.

## OTHER ISSUES

With respect to the other constitutional issues raised in this case, I state my position in what follows— concurring in some, dissenting in others— relative to the results reached by the *ponencia:*

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[39] **Section 7.03** *Drugs, Medicines, and Health Products Already in the EDL.* Drugs, medicines, and health products for reproductive health services already included in the EDL as of the effectivity of these Rules shall remain in the EDL, pending FDA certification that these are not to be used as abortifacients.

## 2 - Right to Health

The *ponencia* ruled that the RH Law adequately protects the right to health.

While I agree that the right to health is not violated, I wish to address here in greater detail petitioners' claims.

Article II, Section 15 in relation to Article XIII, Sections 11 to 13 of the Constitution provides:

> Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.
>
> x x x x
>
> Health
>
> Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.
>
> Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems.
>
> Section 13. The State shall establish a special agency for disabled persons for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.

The right to health is, thus, recognized as a fundamental right.

Petitioners argue that the contraceptives that will be made available under the RH Law have grave side-effects that will adversely affect the users, especially women, in violation of the right to health.

I find petitioners' argument unavailing.

While indeed the RH Law will make available contraceptives that may have harmful side-effects, it is necessary to remember that the law does not impose their use upon any person. Understandably, from petitioners' point of view, it would seem "irrational" for (1) a person to take contraceptives, which have known harmful side effects and, in the long term, even lead to premature death, and (2) the government to subsidize the same in order to prevent pregnancy or to properly space childbearing given that there are other safer means and

methods of family planning. But the weighing of which value is superior to the other is a matter left to the individual's sound judgment and conscience. It is his or her choice; an axiom of liberty; an attribute of free will. Men and women are free to make choices that harm themselves, like cigarette-smoking or excessive intake of alcohol, in order to attain a value that they perceive is more important than their own health and well-being. For as long as these choices are made freely (and do not harm the unborn from conception/fertilization insofar as this case is concerned), the State cannot intervene beyond ensuring that the choices are well-informed absent a clear and unequivocal constitutional or statutory[40] command permitting it to do so.

Under the RH Law, there is nothing to suggest that the contraceptives will be made available without properly informing the target users of their possible harmful side effects. The law itself mandates complete information-dissemination and severely penalizes deliberate misinformation. Section 19(c) of the RH Law in relation to Sections 7.07 to 7.11 of the IRR cover this concern, *viz*:

> SEC. 19. *Duties and Responsibilities.* – x x x
>
> (c) The FDA shall issue strict guidelines with respect to the use of contraceptives, taking into consideration the side effects or other harmful effects of their use.
>
> **Section 7.07** *Technical Requirements for Family Planning Products.* Technical requirements for applications for product registration shall include a product insert or information leaflet for the consumers and health care providers. Appropriate information for the consumers, as determined by the FDA, shall be written in Filipino and/or local languages, as appropriate. The text or wording shall be in layman's terms. Graphics shall be used as appropriate for emphasis or guidance of the consumer using the product: *Provided, That* highly technical information such as medical terminology may be retained in its English version.
>
> At a minimum, the information on the insert or leaflet for consumers or health professional/worker shall include the name of the product, pharmacological category (when applicable), use or indication, proper use, contraindications and any precaution or health warning, and possible side effects and potential health risks. Side effects, adverse effects and other possible health effects shall be clearly described.
>
> Within thirty (30) days from the effectivity of these Rules, the FDA shall develop guidelines for the implementation of this provision.
>
> **Section 7.08** *Provision of Product Information.* The FDA shall provide the public access to information regarding a registered reproductive health product. Among others, the FDA shall post in its website all approved reproductive health products (generic and branded) with all relevant information relevant to proper use, safety and effectiveness of the product, including possible side effects and adverse reactions or events. As appropriate, the FDA shall issue an advisory to inform the consumers about relevant developments regarding these products.

[40] Like a law banning alcohol or cigarettes.

**Section 7.09** *Post-Marketing Surveillance*. All reproductive health products shall be subjected to Post-Marketing Surveillance (PMS) in the country. The PMS shall include, but not be limited to: examining the health risk to the patient, and the risk of pregnancy because of contraceptive failure.

The FDA shall have a sub-unit dedicated to reproductive health products under the Adverse Drug Reaction Unit who will monitor and act on any adverse reaction or event reported by consumers and health professionals or workers. The system for reporting adverse drug reactions/events shall include online reporting at the FDA and DOH website, along with established reporting mechanisms, among others.

Companies with registered products shall be required to have a Post-Marketing Surveillance department, division, section, unit, or group that will monitor and investigate all health-related reactions or risks, or failure of the product to prevent pregnancy.

**Section 7.10** *Product Monitoring*. To ensure the stability, safety, and efficacy of reproductive health products, the FDA shall oversee the provider and/or distributor's compliance with proper distribution, storage, and handling protocols. This shall be done in coordination with private or public reproductive health programs, and the company providing the supplies. The FDA inspectors shall inspect outlets for proper storage and handling of products and supplies, and act on complaints in the field in coordination with the office of the Deputy Director General for Field Office.

**Section 7.11** *Renewal of Product Registration*. In the renewal of product registration of reproductive health products, the FDA shall consider, among others, the following: the Adverse Drug Reaction / Adverse Event Reports, PMS reports, and studies on the safety and effectiveness conducted by the PMS unit of the product company.

**Section 7.12** *Denial or Revocation of Product Registration*. After the careful evaluation of PMS data and other supporting evidence, the FDA shall deny or revoke the registration of reproductive health products that are ineffective or have undesired side effects that may be found during testing, clinical trials and their general use.

We must, thus, reasonably presume that the health service provider will adequately inform the potential users of the contraceptives as to its possible harmful side effects. In any event, petitioners may come before the courts, at the proper time, if, in the implementation of the law, the right to health of the users of the contraceptives are not properly protected because they are given inaccurate information on the contraceptives' possible harmful effects.

## 3 - Freedom of Religion
## 3.a- Establishment Clause

I agree with the *ponencia* that the RH Law does not violate the Establishment Clause for the reasons stated in the *ponencia*.

**3.b- Free Exercise Clause vis-a-vis the Duty to Inform [Section 23(a)(1)] and the Duty to Refer [Section 23(a)(3)]**

I shall jointly discuss the constitutional validity of the duty to inform and duty to refer under the RH Law because they are intricately related to each other.

The *ponencia* ruled that the duty to inform *and* duty to refer imposed on the conscientious objector is unconstitutional for being violative of the Free Exercise of Religion Clause, to wit:

> Resultantly, the Court finds **no compelling state interest** which would limit the free exercise clause of the **conscientious objectors**, however few in number. Only the prevention of an immediate and grave danger to the security and welfare of the community can justify the infringement of religious freedom. If the government fails to show the seriousness and immediacy of the threat, State intrusion is constitutionally unacceptable.
>
> x x x x
>
> Apparently, in these cases, there is **no immediate danger to the life or health** of an individual in the perceived scenario of the subject provisions. After all, a couple who plans the timing, number and spacing of the birth of their children refers to a future event that is contingent on whether or not the mother decides to adopt or use the information, product, method or supply given to her or whether she decides to become pregnant at all. On the other hand, the burden placed upon those who object to contraceptive use is immediate and occurs the moment a patient seeks consultation on reproductive health matters.
>
> Moreover, granting that a compelling interest exists to justify the infringement of the conscientious objector's religious freedom, the respondent have failed to demonstrate "the gravest abuses, endangering paramount interests" which could limit or override a person's fundamental right to religious freedom. Also, the respondents has not presented any government effort exerted to show that the means it seeks to achieve its legitimate state objective is the **least intrusive means**. Other than the assertion that the act of referring would only be momentary, considering that the act of referral by conscientious objector is the very action being contested as violative of religious freedom, it behooves the respondents to demonstrate that no other means can be undertaken by the State to achieve its objective without violating the rights of the conscientious objector. The health concerns of women may still be addressed by other practitioners who may perform reproductive health-related procedures with open willingness and motivation. Suffice it to say, a person who is forced to perform an act in utter reluctance deserves the protection of the Court as the last vanguard of constitutional freedoms.
>
> x x x x

> The Court need not belabor the issue of whether the right to be exempt from being obligated to render reproductive health service and modern family planning methods, includes exemption from being obligated to give reproductive health information and to render reproductive health procedures. Clearly, subject to the qualifications and exemptions earlier discussed, the right to be exempt from being obligated to render reproductive health service and modern family planning methods, **necessarily includes exemption** from being obligated to give reproductive health information and to render reproductive health procedures. The terms "service" and "methods" are broad enough to include the providing of information and the rendering of medical procedures.[41]

I agree that the duty to refer, under pain of penal liability, placed on the conscientious objector is unconstitutional, however, I find that the conscientious objector's duty to inform is constitutional.

To place the Free Exercise of Religion Clause challenge in its proper context, it is necessary to distinguish two key concepts in the RH Law: (1) the duty to inform, and (2) the duty to refer.

The main provisions[42] on the duty to inform and duty to refer vis-à-vis the conscientious objector is found in Section 23(a)(1) in relation to 23(a)(3) of the RH Law, *viz*:

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

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41 Ponencia, pp. 70-71, 82.

42 But it should be noted that Section 7 of the RH Law effectively grants to non-maternity specialty hospitals and hospitals owned and operated by a religious group the same right of a conscientious objector under Section 23 although the term "conscientious objector" is not specifically used in Section 7, to wit:

> 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.

> (3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: *Provided*, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible: *Provided, further*, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases;

The duty to inform is embodied in the above-quoted Section 23(a)(1), which penalizes a public or private health care service provider for: (1) knowingly withholding information or restricting the dissemination of information, and/or (2) intentionally providing incorrect information; where "information" pertains to the programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods.

This provision, thus, seeks to ensure that all persons, who are qualified to avail of the benefits provided by the law, shall be given *complete* and *correct* information on the reproductive health programs and services of the government under the RH Law. It does not provide any exception to the duty to inform. Thus, a conscientious objector is mandated to provide complete and correct information even if this will include information on artificial contraceptives to which he or she objects to on religious grounds. Otherwise, he or she shall suffer the penal liability under the law.

The duty to refer, on the other hand, is provided in the *proviso* of Section 23(a)(3), which is likewise quoted above. This provision penalizes a public or private health care service provider for refusing to extend quality health care services and information on account of a person's marital status, gender, age, religious convictions, personal circumstances, or nature of work. However, it respects the right of the conscientious objector by permitting him or her to refuse to perform or provide the health care services to which he or she objects to on religious or ethical grounds *provided* that he or she immediately refers the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible. As an exception to the exception, the conscientious objector cannot refuse to perform or provide such health care services if it involves an emergency condition or serious case under Republic Act No. 8344.[43]

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[43] REPUBLIC ACT NO. 8344 dated August 25, 1997 pertinently provides that:

**Section 2.** *Section 2 of Batas Pambansa Bilang 702 is hereby deleted and in place thereof, new sections 2, 3 and 4 are added, to read as follows:*

"SEC. 2. For purposes of this Act, the following definitions shall govern:

"(a) 'Emergency' - a condition or state of a patient wherein based on the objective findings of a prudent medical officer on duty for the day there is immediate danger and where

It should be noted that the first sentence of Section 23(a)(3) of the RH Law refers to the refusal to extend quality health care services *and information*. However, the *proviso* in the aforesaid section, which imposes the duty to refer on the conscientious objector, is limited to referring the person to another health care service provider for purposes of availing health care services *only*, *not* health care services *and information*. The implication is that the conscientious objector is required to provide complete and correct information, and, in the event that the person asks for health care services that the conscientious objector objects to on religious or ethical grounds, the conscientious objector has the duty to refer the person to another health care service provider. This interpretation is in accord with the wording of Section 23(a)(1) of the RH Law, which provides no exceptions to the duty to inform.

It should be further noted, and not insignificantly, that Section 23(a)(3) of the RH Law does *not* state that the conscientious objector should refer the person to another health care service provider who *can* perform or provide the heath care services to which the conscientious objector objects to on religious or ethical grounds. Thus, a literal reading of this provision would permit the conscientious objector to refer the person to another health care service provider who is himself a conscientious objector. The IRR attempts to fill this ambiguity in Section 5.24(b) to (e) thereof, *viz*:

> **Section 5.24** *Public Skilled Health Professional as a Conscientious Objector.* In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skilled health professional shall comply with the following requirements:
>
> xxxx
>
> b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;
>
> c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client's travel arrangements and financial capacity;
>
> d) Written documentation of compliance with the preceding requirements; and

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delay in initial support and treatment may cause loss of life or cause permanent disability to the patient.

"(b) 'Serious case' - refers to a condition of a patient characterized by gravity or danger wherein based on the objective findings of a prudent medical officer on duty for the day when left unattended to, may cause loss of life or cause permanent disability to the patient.x x x"

e) Other requirements as determined by the DOH.

In the event where the public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay. x x x

This notwithstanding, and for purposes of the succeeding discussion on the Free Exercise of Religion Clause, the necessary premise is that the duty to refer involves referring the person to another health care service provider who will perform or provide the health care services to which the conscientious objector objects to on religious or ethical grounds. Though this is not explicitly stated in the RH Law, the law must be so reasonably construed given the policy of the law to provide universal access to modern methods of family planning.

As noted earlier, the duty to inform and the duty to refer are intricately related. The reason is that the duty to inform will normally *precede* the duty to refer. The process of availing reproductive health programs and services under the RH Law may be divided into two phases.

In the first phase, the person, who goes to a health service provider to inquire about the government's reproductive health programs and services under the RH Law, will be provided with complete and correct information thereon, including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods.

In the second phase, after receiving the information, the person would then ordinarily reach a decision on which reproductive health programs and services, if any, he or she wishes to avail. Once he or she makes a decision, he or she now asks the health service provider where and how he or she can avail of these programs or services.

From the point of view of the health care service provider, the first phase involves the transmission of information. Petitioners claim that this act of giving complete and correct information, including information on artificial contraceptives, imposes a burden on a conscientious objector, like a Catholic doctor, because he or she is required to give information on artificial contraceptives which he or she believes to be immoral or wrong.

I disagree.

Petitioners failed to convincingly show that the act of giving complete and correct information, including those on artificial contraceptives, burdens a Catholic doctor's religious beliefs. Note that the law merely requires the health service provider to give *complete* and *correct* information. Presumably this can even be done by simply giving the person a handout containing the list of the

government's reproductive health programs and services under the RH Law. The valid secular purpose of the duty to inform is readily apparent and the State interest in ensuring complete and correct information is direct and substantial in order that the person may make an informed and free choice.

The law does not command the health service provider to endorse a particular family planning method but merely requires the presentation of complete and correct information so that the person can make an informed choice. A conscientious objector, like a Catholic doctor, is, thus, not compelled to endorse artificial contraceptives as the preferred family planning method. On its face, therefore, there appears to be no burden imposed on the conscientious objector under the duty to inform.

To my mind, to successfully claim that a conscientious objector, like a Catholic doctor, is burdened by the duty to inform, petitioners should have demonstrated that, for a Catholic doctor, the *mere mention* of artificial contraceptives (what they are and how they work) to the person is immoral under the tenets of the Catholic faith. In the case at bar, petitioners failed to carry this *onus*. Moreover, after providing the complete and correct information as mandated by the RH Law, there is nothing to prevent the conscientious objector, like a Catholic doctor, from speaking against artificial contraceptives on religious or ethical grounds because the RH Law cannot curtail freedom of speech; the Constitution is deemed written into the law.

For the foregoing reasons, I find that petitioners failed to clearly show that the act of giving complete and correct information on reproductive health programs and services under the RH Law burdens a conscientious objector's religious beliefs. Thus, I find that the duty to inform under Section 23(a)(1) of the RH Law is constitutional even with respect to the conscientious objector. In other words, the conscientious objector has the duty to inform under the aforesaid section.

I now turn to the duty to refer. As already mentioned, I reach an opposite result here. The central reason is that the second phase involves a crucial distinguishing feature from the first phase. In the first phase, the person merely receives the complete and correct information from the health service provider but, in the second case, the person now *decides to act on the information.* He or she makes a decision to avail of one or more of the government's reproductive health programs and services under the RH Law. In case the person seeks to avail of a program or service which the conscientious objector objects to on religious or ethical grounds, Section 23(a)(3) imposes on the conscientious objector the duty to refer the person to a health service provider who can perform or provide such program and service.

This is an entirely different scenario. The person has already made a decision and now seeks to accomplish an act which the conscientious objector considers immoral or wrong on religious or ethical grounds. When the RH Law compels the conscientious objector to make such a referral, under pain of penal liability, the religious or ethical beliefs of the conscientious objector is clearly burdened because he or she is made to either (1) join in this intention or (2) aid in the accomplishment of this intention which he or she considers immoral or wrong.

To illustrate, a Catholic doctor, who objects to the use of artificial contraceptives, is compelled to refer a person who seeks such services to another health care service provider who will, in turn, perform or provide services related to artificial contraception. In such a case, the Catholic doctor is effectively commanded to either (1) join in the intention of the person to use artificial contraceptives or (2) aid in the accomplishment of this intention. From another perspective, the Catholic doctor may view the referral as an essential link in the chain of events which would lead to the availment of the person of such artificial contraceptives.

Consequently, in the above scenario, I am of the view that the religious or ethical beliefs of the conscientious objector are clearly burdened by the duty to refer, thus, calling for the application of the test enunciated in *Estrada v. Escritor*,[44] to wit:

1. The sincerity and centrality of the religious belief and practice;

2. The State's compelling interest to override the conscientious objector's religious belief and practice; and

3. The means the State adopts in pursuing its interest is the least restrictive to the exercise of religious freedom.[45]

Anent the first test, insofar as the Catholic health service provider is concerned *vis-à-vis* the use of artificial contraceptives, I find that petitioners have met the sincerity and centrality test. The Catholic Church's teaching on the use of artificial contraceptives as immoral, evil or sin is of time immemorial and well documented. Its sincerity and centrality to the Catholic faith cannot be seriously doubted as a papal encyclical, *Humanae Vitae*, has even been principally devoted to re-stating or expressing the Catholic Church's teaching on artificial contraceptives, to wit:

***Faithfulness to God's Design***

**13.** Men rightly observe that a conjugal act imposed on one's partner without regard to his or her condition or personal and reasonable wishes in the

[44] *Estrada v. Escritor*, 455 Phil. 411 (2003).
[45] Id. at 600.

matter, is no true act of love, and therefore offends the moral order in its particular application to the intimate relationship of husband and wife. If they further reflect, they must also recognize that an act of mutual love which impairs the capacity to transmit life which God the Creator, through specific laws, has built into it, frustrates His design which constitutes the norm of marriage, and contradicts the will of the Author of life. Hence to use this divine gift while depriving it, even if only partially, of its meaning and purpose, is equally repugnant to the nature of man and of woman, and is consequently in opposition to the plan of God and His holy will. But to experience the gift of married love while respecting the laws of conception is to acknowledge that one is not the master of the sources of life but rather the minister of the design established by the Creator. Just as man does not have unlimited dominion over his body in general, so also, and with more particular reason, he has no such dominion over his specifically sexual faculties, for these are concerned by their very nature with the generation of life, of which God is the source. "Human life is sacred—all men must recognize that fact," Our predecessor Pope John XXIII recalled. "From its very inception it reveals the creating hand of God." (13)

***Unlawful Birth Control Methods***

**14.** Therefore We base Our words on the first principles of a human and Christian doctrine of marriage when We are obliged once more to declare that the direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children. (14) Equally to be condemned, as the magisterium of the Church has affirmed on many occasions, is direct sterilization, whether of the man or of the woman, whether permanent or temporary. (15)

Similarly excluded is any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation—whether as an end or as a means. (16)

Neither is it valid to argue, as a justification for sexual intercourse which is deliberately contraceptive, that a lesser evil is to be preferred to a greater one, or that such intercourse would merge with procreative acts of past and future to form a single entity, and so be qualified by exactly the same moral goodness as these. Though it is true that sometimes it is lawful to tolerate a lesser moral evil in order to avoid a greater evil or in order to promote a greater good," it is never lawful, even for the gravest reasons, to do evil that good may come of it (18)—in other words, to intend directly something which of its very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote the welfare of an individual, of a family or of society in general. Consequently, it is a serious error to think that a whole married life of otherwise normal relations can justify sexual intercourse which is deliberately contraceptive and so intrinsically wrong.[46]

Because petitioners have met the first test, the burden shifts to the government to meet the last two tests in order for the constitutional validity of the duty to refer to pass muster.

[46] http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html last accessed on March 24, 2014.

Anent the second test, the government failed to establish a compelling State interest to justify the duty to refer under pain of penalty. The purpose of the duty to refer is to facilitate the availment of the government's reproductive health programs and services. That is, it is logically more convenient that, after receiving complete and correct information on the government's reproductive health programs and services from a conscientious objector, the person should be readily referred to another health service provider who can perform or provide the chosen program or service to which the conscientious objector objects to on religious grounds.

The primary State interest, therefore, that the duty to refer serves is the facility of availing such programs and services or, in short, the person's convenience. Put another way, if there were no duty to refer and, thus, the conscientious objector is allowed to say to the person, "Sorry, I do not know of and/or cannot refer you to such a health service provider because I would be helping you to accomplish something that I consider immoral or wrong," then, at most, the person suffers the inconvenience of having to look for the proper health service provider, on his or her own, who can provide or perform the chosen program or service. Plainly, the person's convenience cannot override the conscientious objector's religious freedom; a right founded on respect for the inviolability of the human conscience.[47]

Anent the third test, which is intimately related to the second test, there are clearly other means to achieve the purpose of the duty to refer. Upon the implementation of the RH Law, through Sections 5.22,[48] 5.23,[49] and 5.24[50] of the

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47 Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary (2009) at 330.

48 **Section 5.22** *Exemption of Private Hospitals from Providing Family Planning Services*. Private health facilities shall provide a full range of modern family planning methods to clients, unless the hospital is owned and operated by a religious group, or is classified as a non-maternity specialty hospital, as part of their annual licensing and accreditation requirements.

In order to receive exemption from providing the full range of modern family planning methods, the health care facility must comply with the following requirements:

a) Submission of proof of hospital ownership and management by a religious group or its status as a non-maternity specialty hospital;

b) Submission to the DOH of an affidavit stating the modern family planning methods that the facility refuses to provide and the reasons for its objection;

c) Posting of a notice at the entrance of the facility, in a prominent location and using a clear/legible layout and font, enumerating the reproductive health services the facility does not provide; and

d) Other requirements as determined by the DOH.

Within sixty (60) days from the effectivity of these Rules, the DOH shall develop guidelines for the implementation of this provision.

49 **Section 5.23** *Private Skilled Health Professional as a Conscientious Objector*. In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a private skilled health professional shall comply with the following requirements:

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

b) Posting of a notice at the entrance of the clinic or place of practice, in a prominent location and using a clear/legible font, enumerating the reproductive health services he or she refuses to provide; and

c) Other requirements as determined by the DOH.

IRR, the government will already be able to identify both conscientious objectors and non-conscientious objectors. It can, therefore, map out an effective strategy to inform all potential patients or target beneficiaries where they can avail of the *complete* reproductive health programs and services under the RH Law (which refer simply to the identity and location of all non-conscientious objector health service providers). This is well-within the State's administrative and logistical capability given its enormous machinery and the mandate of Section 20 of the RH Law, which provides that:

> "SEC. 20. Public Awareness. – The DOH and the LGUs shall initiate and sustain a heightened nationwide multimedia-campaign to raise the level of public awareness on the protection and promotion of reproductive health and rights including, but not limited to, maternal health and nutrition, family planning and responsible parenthood information and services, adolescent and youth reproductive health, guidance and counseling and other elements of reproductive health care under Section 4(q).
>
> Education and information materials to be developed and disseminated for this purpose shall be reviewed regularly to ensure their effectiveness and relevance."

The information, then, as to which health service provider is not a conscientious objector can easily be disseminated through the information campaign of the government without having to burden the conscientious objector with the duty to refer.

Based on the foregoing, the duty to refer fails to meet the criteria set in *Estrada v. Escritor.*[51] Thus, it is unconstitutional.

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Within sixty (60) days from the effectivity of these Rules, the DOH shall develop guidelines for the implementation of this provision.

50 **Section 5.24** *Public Skilled Health Professional as a Conscientious Objector.* In order to legally refuse to deliver reproductive health care services or information as a conscientious objector, a public skilled health professional shall comply with the following requirements:

a) The skilled health professional shall explain to the client the limited range of services he/she can provide;
b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;
c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client's travel arrangements and financial capacity;
d) Written documentation of compliance with the preceding requirements; and
e) Other requirements as determined by the DOH.

In the event where the public skilled health professional cannot comply with all of the above requirements, he or she shall deliver the client's desired reproductive health care service or information without further delay.

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

Within sixty (60) days from the effectivity of these rules, the DOH shall develop guidelines for the implementation of this provision.

51 Supra note 44.

Before closing the discussion on the duty to inform and the duty to refer, I wish to highlight the preferred status that religious freedom occupies in the hierarchy of constitutional rights by way of analogy. Let us assume that the State promulgates a law which subsidizes the purchase of weapons due to rising criminality. The law requires store owners, in the business of selling such weapons, to fully inform their buyers of the available weapons subsidized by the government. A store owner is, thus, required to inform a buyer that the following are the government subsidized weapons: knives and guns. The store owner would have no problem acceding to this duty to inform. But suppose, one day, a buyer comes to his store and says that he wants to buy a gun in order to kill or murder his neighbor. The store owner, assuming he acts in accordance with his conscience, would ordinarily refuse to sell the gun. If the law, however, requires the store owner to refer the buyer to another store where the buyer can avail of this gun, despite the latter's motive for buying the gun, would this not impose a burden on the conscience of the store owner?

To a non-believer, the matter of the duty to refer relative to, say, artificial contraceptives may seem too inconsequential to merit constitutional protection. But the Court cannot judge the truth or falsity of a religious belief nor the seriousness of the consequences that its violation brings upon the conscience of the believer. For to the believer, referring a person to a health service provider where the latter can avail of artificial contraceptives may be of the same or similar level as referring a person to a store owner where he can purchase a gun to kill or murder his neighbor. It constitutes a breach of his or her covenant relationship with his or her God, and, thus, affects his or her eternal destiny. That, precisely, is the province of the Free Exercise of Religion Clause. That the believer may not have to choose between his or her earthly freedom (imprisonment) and his or her eternal destination.

In view of the foregoing, I find that the duty to refer imposed on the conscientious objector under Sections 7 and 23(a)(3) of the RH Law is unconstitutional for violating the Free Exercise of Religion Clause. Consequently, the phrase, "*Provided, further, That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible,*" in Section 7 and the phrase, "*however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible,*" in Section 23(a)(3) of the RH Law should be declared void. Consequently, Sections 5.24(b) to (e) and 5.25 of the IRR, which implements the aforesaid provisions of the RH Law, are void.

In another vein, I agree with the *ponencia* that the last paragraph of Section 5.24 of the IRR is *ultra vires* because it effectively amends Section 4(n) in relation to Section 23(a)(3) of the RH Law.

Under Section 4(n) of the RH Law, a public health care service provider is defined as follows:

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

While last paragraph of Section 5.24 of the IRR states:

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

The above-enumerated skilled health professionals fall within the definition of a "public health care service provider" under Section 4(n) of the RH Law. Under Section 23(a)(3) of the RH Law, *both* public and private health service providers may invoke the right of a conscientious objector. The last paragraph of Section 5.24 of the IRR is, thus, void insofar as it deprives the skilled health professionals enumerated therein from the right to conscientious objection.

I also agree with the *ponencia* that the last paragraph of Section 5.24 of the IRR is unconstitutional for being violative of the Equal Protection Clause although I find that the proper standard of review is the strict scrutiny test.

The IRR effectively creates two classes with differential treatment with respect to the capacity to invoke the right of a conscientious objector: (1) skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RH Law and its IRR, and (2) skilled health professionals not belonging to (1). Those belonging to the first class cannot invoke the right of a conscientious objector while those in the second class are granted that right.

In our jurisdiction, equal protection analysis has generally followed the rational basis test coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law absent a clear and unequivocal showing of a breach of the Constitution.[52] However, when the classification burdens a suspect class or impinges on fundamental rights, the proper standard of review is the strict scrutiny test.[53]

Under the strict scrutiny test, the government must show a compelling or overriding end to justify either: (1) the limitation on fundamental rights or (2) the implication of suspect classes.[54] The classification will only be upheld if it is shown to be suitably tailored to serve a compelling State interest.[55] Suspect classes include classifications based on race, nationality, alienage or denominational preference while classifications impinging on fundamental rights include those affecting marriage, procreation, voting, speech and interstate travel.[56]

Here, the classification impinges on the fundamental right of free exercise of religion, as operationalized through the right of a conscientious objector, which the RH Law recognizes and respects. The government must, therefore, show that the differential treatment between the first class and second class of skilled health professionals serves a compelling State interest.

I find that the State has failed to prove how curtailing the right of conscientious objection of those belonging to the first class will further a compelling State interest. One perceptible reason for depriving the right of conscientious objection to those belonging to the first class appears to be the fear that this will paralyze or substantially degrade the effective implementation of the RH Law considering that these skilled health professionals are employed in public health institutions and local government units.

This fear rests on at least two assumptions: (1) most, if not all, skilled health professionals belonging to the first class are conscientious objectors, and (2) the State is incapable of securing the services of an adequate number of skilled health professionals who are not conscientious objectors. Both assumptions have not been proven by the State. And, even if it were so proven, it must be recalled that the right of the conscientious objector is a limited one: he or she may refuse to perform or provide reproductive health services to which he or she objects to on religious grounds. In such a case, the solution is for the person to avail of such services elsewhere. Consequently, the State would now have to show that the inconvenience caused on the part of the person, who must secure such services

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52 *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 583-584 (2004).
53 Id. at 585.
54 Id. at 644. (Panganiban, J. dissenting)
55 Id.
56 Id. at 645-646.

elsewhere (which could be as near as the doctor in the next room or as far-flung as the doctor in another province or region) overrides the freedom of religion of conscientious objectors belonging to the first class. As earlier noted, it is self-evident that the person's convenience cannot override the freedom of religion of the conscientious objector; a constitutionally protected right predicated on respect for the inviolability of the human conscience. (Even if this inconvenience would entail, for example, added transportation costs, it cannot be seriously argued that one can place a monetary value on the inviolability of the human conscience.)

Hence, I find that the last paragraph of Section 5.24 of the IRR is unconstitutional on equal protection grounds.

**3.c- Family Planning Seminars**

I agree with the *ponencia* that Section 15 of the RH Law mandating a family planning seminar as a condition for the issuance of a marriage license is constitutional for reasons stated in the *ponencia*.

**4- The Family Planning And The Right To Privacy**
**4.a. Decision-making by the spouses**

I agree with the *ponencia* that Section 23(a)(2)(i) of the RH Law is unconstitutional but for different reasons.

The *ponencia* ruled that the aforesaid provision contravenes Article XV, Section 3 of the Constitution and the constitutional right to privacy of the spouses relative to the decision-making process on whether one spouse should undergo a reproductive health procedure like tubal ligation and vasectomy. According to the *ponencia*, the decision-making process on reproductive health procedures must involve both spouses, that is, the decision belongs exclusively to both spouses, in consonance with the right of the spouses to found a family. Otherwise, this will destroy family unity. Further, this process involves a private matter that the State cannot intrude into without violating the constitutional right to marital privacy. The spouses must, thus, be left alone to chart their own destiny.

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

> "SEC. 23. *Prohibited Acts.* – The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> xxxx

> (2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:
>
> (i) Spousal consent in case of married persons: Provided, That in case of disagreement, **the decision of the one undergoing the procedure shall prevail**; x x x (Emphasis supplied)

This provision contemplates a situation where the spouses are unable to agree if one of them should undergo a reproductive health procedure like tubal ligation or vasectomy. It does not dispense with consulting the other spouse but provides a mechanism to settle the disagreement, if one should arise.

Indeed, the decision-making process in this area is a delicate and private matter intimately related to the founding of a family. The matter should, thus, be decided by both spouses under the assumption that they will amicably settle their differences and forthwith act in the best interest of the marriage and family. But, as in all relations between and among individuals, irreconcilable disagreements may arise. The law, therefore, steps in to break the *impasse*.

The law, however, settles the dispute by giving the spouse, who will undergo the procedure, the absolute and final authority to decide the matter. The rationale seems to be that the spouse, who will undergo the procedure, should ultimately make the decision since it involves his or her body.

Like the *ponencia*, I am of the view that this provision in the RH Law clearly violates Article II, Section 12 in relation to Article XV, Sections 1 and 3(1) of the Constitution, which are quoted hereunder:

> Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x
>
> x x x x
>
> Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development. x x x
>
> x x x x
>
> Section 3. The State shall defend:
>
> (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood; x x x

Taken together, these constitutional provisions are intended to, among others, prohibit the State from adopting measures which impair the solidarity of the Filipino family.[57] In particular, Section 3(1) explicitly guarantees the right of the spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood. This necessarily refers to, among others, the number of children that the spouses will bring into this world.

The provision speaks of this right as properly belonging to *both* spouses. The right is, thus, conferred on both of them and they are to exercise this right jointly. Implicit in this provision is that the spouses *equally* possess this right particularly when read in light of Article II, Section 14[58] of the Constitution which enjoins the State to ensure the fundamental equality before the law of women and men.

Thus, the spouse, who will undergo the reproductive health procedure, cannot be given the absolute and final authority to decide this matter because it will destroy the solidarity of the family, in general, and do violence to the equal right of each spouse to found the family in accordance with their religious convictions and the demands of responsible parenthood, in particular.

My disagreement with the ruling of the *ponencia*, however, is that it falls on the other extreme. When the *ponencia* states that the aforesaid decision-making process must be settled through the spouses' mutual consent and that the State cannot intrude in such process because of the right to marital privacy, the implicit result is that the other spouse, who refuses to give his or her consent, is given the absolute and final authority to decide this matter. In other words, the result reached by the *ponencia* is merely the opposite of that under the RH Law. That is, the non-consenting spouse is effectively given the absolute and final authority in the decision-making process.

I find this result equally repugnant to the afore-discussed constitutional provisions.

To my mind, the State *can* intervene in marital rights and obligations when there are genuine and serious disagreements between the spouses. This is a basic postulate of our Constitution relative to marriage and family relations as well as our existing family laws and rules of procedure. The constitutional right to privacy does not apply in this situation because the conflict of rights and obligations is between one spouse and the other, and does not involve a dispute between the State and the spouses.

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[57] Supra note 47 at 83.

[58] The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

This view is consistent with the provisions of the Family Code on dispute resolution between spouses which preserves and adheres to the constitutional precept on the solidarity of the family and the right, belonging to both spouses, to found the family. State intervention, which provides the solution to the problem, involves calling upon the courts to ultimately settle the dispute in case of disagreement between the spouses. To illustrate, the Family Code explicitly provides how disagreements shall be settled in various marital and family relations' controversies, to wit:

> ARTICLE 69. The husband and wife shall fix the family domicile. **In case of disagreement, the court shall decide.**
>
> The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.
>
> x x x x
>
> ARTICLE 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.
>
> **In case of disagreement, the court shall decide** whether or not:
>
> (1) The objection is proper, and
>
> (2) Benefit has accrued to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the separate property of the spouse who has not obtained consent.
>
> The foregoing provisions shall not prejudice the rights of creditors who acted in good faith.
>
> x x x x
>
> ARTICLE 96. The administration and enjoyment of the community property shall belong to both spouses jointly. **In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy**, which must be availed of within five years from the date of the contract implementing such decision. x x x
>
> x x x x
>
> ARTICLE 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. **In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary**.
>
> x x x x
>
> ARTICLE 225. The father and the mother shall jointly exercise legal guardianship over the property of their unemancipated common child without the

> necessity of a court appointment. **In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.** (Emphasis supplied)

While there appears to be no law prior to the RH Law *specifically* dealing with the decision-making process on undergoing reproductive health procedures by one spouse, there is no obstacle to the application of the above principle (*i.e.*, "in case of disagreement, the court will decide") because such decision-making process is properly subsumed in the mass of marital rights and obligations, and the general principles governing them, provided in our Constitution and family laws and is, therefore, within the ambit of the judicial power of courts to settle actual controversies involving rights which are legally demandable and enforceable.[59] The principle of "in case of disagreement, the court will decide" properly governs how conflicts involving marital rights and obligations shall be resolved, without giving to one spouse the absolute and final authority to resolve the conflict, and, thus, preserving the equal right of the spouses to found the family and maintaining the solidarity of the family in consonance with the Constitution.

Of course, unlike most of the above-quoted Family Code provisions, neither the husband nor wife's decision in this particular situation can, in the meantime, prevail considering that the effects of the reproductive health procedures may be permanent or irreversible. Thus, the decision-making process on undergoing reproductive health procedures by one spouse requires the consent of both spouses but, in case of disagreement, the courts will decide.

The key principle is that no spouse has the absolute and final authority to decide this matter because it will run counter to the constitutional edict protecting the solidarity of the family and equally conferring the right to found the family on both spouses. Consequently, while I agree that Section 23(a)(2)(i) of the RH Law is unconstitutional, the declaration of unconstitutionality should not be construed as giving the non-consenting spouse the absolute and final authority in the decision-making process relative to undergoing a reproductive health procedure by one spouse. The proper state of the law and rules of procedure on the matter is that the decision shall require the consent of both spouses, and, in case of disagreement, the matter shall be brought before the courts for its just adjudication.

## 4.b. - The need of parental consent

I agree with the *ponencia* that the phrase, "except when the minor is already a parent or has had a miscarriage," in Section 7 of the RH Law is unconstitutional but for different reasons. This provision states, in part, that:

> SEC. 7. *Access to Family Planning.* – x x x

[59] CONSTITUTION, Article VIII, Section 1.

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

Article II, Section 12 of the Constitution states, in part:

> Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x

The description of the family as a "basic" social institution is "an assertion that the family is anterior to the state and is not a creature of the state"[60] while the reference to the family as "autonomous" is "meant to protect the family against the instrumentalization by the state."[61] This provision is, thus, a guarantee against unwarranted State intrusion on matters dealing with family life.

The subject of parental authority and responsibility is specifically dealt with in the last sentence of the above constitutional provision which reads:

> The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

As a natural right, parental authority is recognized as an inherent right, not created by the State or decisions of the courts, but derives from the nature of the parental relationship.[62] More important, as pertinent in this controversy, the present Constitution refers to such right as "primary" which "imports the assertion that the right of parents is superior to that of the state."[63]

Title IX of the Family Code is the principal governing law on parental authority. Chapter 3, Section 220 thereof provides:

> Chapter 3. Effect of Parental Authority Upon the Persons of Children
>
> ARTICLE 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:
>
> (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

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60 Supra note 47 at 83.
61 Id.
62 *Vancil v. Belmes*, 411 Phil. 359, 365 (2001).
63 Supra note 47 at 85.

(2) To give them love and affection, advice and counsel, companionship and understanding;

(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) To enhance, protect, preserve and maintain their physical and mental health at all times;

(5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;

(6) To represent them in all matters affecting their interests;

(7) To demand from them respect and obedience;

(8) To impose discipline on them as may be required under the circumstances; and

(9) To perform such other duties as are imposed by law upon parents and guardians.

As can be seen from the foregoing, the constitutional and statutory *recognition* of parental authority (for as afore-stated such authority precedes the State and laws) is broad and indivisible, full and complete in *all* matters relating to the rearing and care of minors in order to promote their welfare and best interest. Further, the deprivation or loss of parental authority, which is governed by the judicial process, arises only in exceptional cases when the best interest of the minor so requires. There is, therefore, an inherent public policy recognizing the necessity of keeping parental authority intact and shielding it from undue State intrusion or interference.

Viewed in this light, Section 7 of the RH Law is a radical departure from the afore-discussed public policy as embodied in our Constitution and family laws. The decision on access to modern methods of family planning by minors evidently falls within the ambit of parental authority, in general, and Article 220 of the Family Code, in particular, which recognizes the parents' right and duty to provide advice and counsel, moral and spiritual guidance, as well as to protect, preserve and maintain the minor's physical and mental health. It cannot be doubted that the use of modern methods of family planning by a minor will greatly impact his or her physical, mental, moral, social and spiritual life. And yet Section 7 would exempt such a decision by a minor, who is already a parent or has had a miscarriage, from parental authority by allowing access to modern methods of family planning without parental consent.

I find that this *proviso* in the RH Law is unconstitutional in view of the nature and scope of parental authority.

Because parental authority is a constitutionally recognized natural and primary right of the parents, with emphasis on "primary" as giving parents a superior right over the State, the State cannot carve out an exception to such authority without showing or providing a sufficiently compelling State interest to do so. A limited but blanket exception from parental authority, such as that found in Section 7 of the RH Law, will undoubtedly destroy the solidarity of the family as well as foster disrespect and disobedience on the part of the minor. It disrupts the natural state of parent-child relationship and is wholly inconsistent with the purpose and essence of parental authority granting the parents the natural and primary right in *all* matters relating to the rearing and care of the minor in order to safeguard his or her well-being.

In the case at bar, the State failed to prove such sufficiently compelling State interest. The rationale of Section 7 seems to be that a minor, who is already a parent or has had a miscarriage, by reason of such fact alone, *automatically* and *definitively* attains a level of maturity that demands that he or she no longer be placed under the parental authority of his or her parents relative to decisions involving access to modern methods of family planning. However, there is no basis to reach this conclusion. The State has provided none. And the opposite is probably more true; in that the early parenthood or miscarriage of the minor is a sign of immaturity which, therefore, necessitates *greater* parental guidance, supervision and support for the minor, including decisions relative to access to modern methods of family planning. This is especially true in the case of the minor who faces the early prospect of raising a child or children.

Further, if the purpose of Section 7 of the RH Law is to uphold the interest of the minor, who is already a parent or has had a miscarriage, from his or her parents who unjustifiably withholds consent for him or her to have access to modern methods of family planning, there are less intrusive means to achieve this purpose considering that a judicial remedy, where the courts can look into the particular circumstances of a case and decide thereon based on the best interest of the minor, may be availed of by the minor.

The State has, therefore, not only failed to prove a sufficiently compelling State interest to carve out an exception to the constitutionally recognized parental authority of parents but also failed to prove that the apparent goal of this provision cannot be attained by less intrusive means. Hence, Section 7 of the RH Law, particularly the phrase, "except when the minor is already a parent or has had a miscarriage," is unconstitutional for violating the natural and primary right of parents in rearing their minor children as recognized under Article II, Section 12 of the Constitution.

Additionally, the distinction based on the predicament of the minor, as already being a parent or has had a miscarriage, vis-à-vis the requirement of parental consent on matters relating to access to modern methods of family planning is unconstitutional on equal protection grounds. A parallel standard of review leads to the same end result.

The *proviso* in Section 7 of the RH Law effectively creates two groups with varying treatments: (1) minors who are already parents or have had a miscarriage, and (2) minors who are not parents or have not had a miscarriage. The first group is exempt from parental consent while the second is not.

For convenience, I reproduce below the baseline principles on equal protection analysis which I utilized in a previous section:

> In our jurisdiction, equal protection analysis has generally followed the rational basis test coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law absent a clear and unequivocal showing of a breach of the Constitution. However, when the classification burdens a suspect class or impinges on fundamental rights, the proper standard of review is the strict scrutiny test.
>
> Under the strict scrutiny test, the government must show a compelling or overriding end to justify (1) the limitation on fundamental rights or (2) the implication of suspect classes. The classification will only be upheld if it is shown to be suitably tailored to serve a compelling State interest. Suspect classes include classifications based on race or nationality while classifications impinging on fundamental rights include those affecting marriage, procreation, voting, speech and interstate travel.

As stated earlier, the fundamental right involving the parental authority of parents over their minor children is unduly limited by the *proviso* in Section 7 of the RH Law, thus, calling for the application of the strict scrutiny test. The government must show that a compelling State interest justifies the curtailment of parental authority of parents whose minor children belong to the first group (*i.e.*, minors who are already parents or have had a miscarriage) vis-à-vis parents whose minor children belong to the second group (*i.e.*, minors who are not parents or have not had a miscarriage). However, for reasons already discussed as to the maturity level of such group of minors and the apparent purpose of the subject legal provision, the government has failed to show such compelling State interest. Hence, the phrase "except when the minor is already a parent or has had a miscarriage" in Section 7 of the RH Law is, likewise, unconstitutional on equal protection grounds.

**4.c- Access to information**

I agree with the *ponencia* that there is nothing unconstitutional about the capacity of a minor to access information on family planning services under

Section 7 of the RH Law for the reasons stated in the *ponencia*. In addition, for practical reasons, the State or parents of the minor cannot prevent or restrict access to such information considering that they will be readily available on various platforms of media, if they are not already available at present. It is only when the minor decides to act on the information by seeking access to the family planning services themselves that parental authority cannot be dispensed with (as discussed in a previous section).

## 5- Age-And Development-Appropritate Reproductive Health Education

I agree with the *ponencia* that the constitutional challenge against Section 14[64] of the RH Law is unavailing insofar as it is claimed to violate Article II, Section 12 of the Constitution on the natural and primary right and duty of parents to rear their children. Indeed, the State has a substantial interest in the education of the youth. Pursuant to its police power, the State may regulate the content of the matters taught to adolescents particularly with respect to reproductive health education in order to, among others, propagate proper attitudes and behavior relative to human sexuality and sexual relations as well as properly prepare the young for marriage and family life. The topics to be covered by the curriculum include values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood. The curriculum is, thus, intended to achieve valid secular objectives. As the *ponencia* aptly noted, the RH Law seeks to supplement, not supplant, the natural and primary right and duty of parents to rear their children.

Further, the constitutional challenge against Section 14 relative to the Free Exercise of Religion Clause is premature because, as noted by the *ponencia*, the Department of Education, Culture and Sports (DECS) has yet to formulate the curriculum on age- and development-appropriate reproductive health education. A Free Exercise of Religion Clause challenge would necessarily require the challenger to state what specific religious belief of his or hers is burdened by the subject curriculum as well as the specific content of the curriculum he or she

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[64] Section 14 of the RH Law states:

SEC. 14. *Age- and Development-Appropriate Reproductive Health Education.* – The State shall provide age- and development-appropriate reproductive health education to adolescents which shall be taught by adequately trained teachers informal and nonformal educational system and integrated in relevant subjects such as, but not limited to, values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood: Provided, That flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents-teachers-community associations, school officials and other interest groups. The Department of Education (DepED) shall formulate a curriculum which shall be used by public schools and may be adopted by private schools.

objects to on religious grounds. Moreover, the proper party to mount such a challenge would be the student and/or his or her parents upon learning of the specific content of the curriculum and upon deciding what aspects of their religious beliefs are burdened. It would be inappropriate for the Court to speculate on these aspects of a potential Free Exercise of Religion Clause litigation involving a curriculum that has yet to be formulated by the DECS.

As to the equal protection challenge against Section 14, I agree with the *ponencia* that there are substantial distinctions between public and private educational institutions which justify the optional teaching of reproductive health education in private educational institutions. (By giving private educational institutions the option to adopt the curriculum to be formulated by the DECS, the RH Law effectively makes the teaching of reproductive health education in private educational institutions optional because the aforesaid institutions may completely discard such curriculum).

However, I disagree that the academic freedom of private educational institutions should be a basis of such justification. Article XIV, Section 5(2) of the Constitution provides that, "[a]cademic freedom shall be enjoyed in all institutions of higher learning." Thus, only institutions of higher learning enjoy academic freedom. Considering that the students who will be subjected to reproductive health education are adolescents or "young people between the ages of ten (10) to nineteen (19) years who are in transition from childhood to adulthood,"[65] then this would presumably be taught in elementary and high schools which are not covered by academic freedom.

Nonetheless, I agree with the *ponencia* that, by effectively decreeing optional teaching of reproductive health education in private educational institutions, the RH Law seeks to respect the religious belief system of the aforesaid institutions. I find this to be a reasonable basis for the differential treatment between public and private educational institutions.

As previously discussed, the general approach in resolving equal protection challenges in our jurisdiction is to utilize the rational basis test. Here, the classification between public and private educational institutions neither contains a suspect classification nor impinges on a fundamental right, thus, the rational basis test is *apropos*.[66] In *British American Tobacco v. Sec. Camacho*,[67] we explained that –

> Under this test, a legislative classification, to survive an equal protection challenge, must be shown to rationally further a legitimate state interest. The classifications must be reasonable and rest upon some ground of difference

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65 Section 4(b), RH Law.
66 *British American Tobacco v. Camacho,* 584 Phil. 489 (2008).
67 Id.

> having a fair and substantial relation to the object of the legislation. Since every law has in its favor the presumption of constitutionality, the burden of proof is on the one attacking the constitutionality of the law to prove beyond reasonable doubt that the legislative classification is without rational basis. The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there is no conceivable basis which might support it.[68]

Noticeably, the RH Law is replete with provisions respecting the religious freedoms of individuals. In fact, one of its central and guiding principles is free and informed choice, thus, negating the imposition of any family planning method on an individual who objects on religious grounds. The same principle appears to have been carried over relative to the teaching of reproductive health education in private educational institutions. Congress may have legitimately concluded that the State interests in societal peace, tolerance or benevolent-neutrality accommodation, as the case may be, vis-à-vis the various religious belief systems of private educational institutions in our nation will be better served by making the teaching of reproductive health education (which may touch on or impact delicate or sensitive religious beliefs) as merely optional in such institutions. We can take judicial notice of the fact that majority of the private educational institutions in our nation were established and are run by religious groups or sects.

The classification in Section 14 of the RH Law, thus, rests on substantial distinctions and rationally furthers a legitimate State interest. It seeks to further no less than the constitutional principle on the separation of State and Church as well as the Free Exercise of Religion Clause. In fine, it is not for this Court to look into the wisdom of this legislative classification but only to determine its rational basis. For the foregoing reasons, I find that the differential treatment between public and private educational institutions in the law passes the rational basis test and is, thus, constitutional insofar as the equal protection challenge is concerned.

## 6- Due Process and Free Speech Clause

I agree with the *ponencia* that the void for vagueness doctrine is inapplicable to the challenged portions of the RH Law for reasons stated in the *ponencia*.

However, I find it necessary to discuss in greater detail why the void for vagueness doctrine is not applicable particularly with respect to the duty to inform under Section 23(a)(1) of the RH Law. The reason is that the void for vagueness challenge is inextricably related to freedom of speech which, under the exceptional circumstances of this case, once again requires the Court to take steps to protect this constitutional right pursuant to its expanded jurisdiction and as a penumbra to its power to issue rules for the protection and enforcement of constitutional rights.

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[68] Id.

As previously discussed, Section 23(a)(1) of the RH Law imposes a duty to inform on both public and private health care service providers:

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

In effect, the law requires that *complete* and *correct* information on the government's reproductive health programs and services, including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods, be given to all persons who are qualified beneficiaries under the RH Law. The law and its IRR, however, does not define the nature and extent of "complete and correct information." Petitioners claim that, without this definition, the duty to inform should be nullified under the void for vagueness doctrine.

I disagree.

The RH Law enjoys the presumption of constitutionality and should be given a construction which will avoid its nullity. The phrase "[k]nowingly withhold information or restrict the dissemination thereof, and/or intentionally provide incorrect information regarding programs and services" under Section 23(a)(1) of the RH Law should be reasonably and narrowly construed as merely requiring the health care service provider to provide and explain to persons the *list* of the government's reproductive health programs and services under the RH Law. To illustrate, if the government's reproductive health programs and services under the RH Law consists of A, B, C and D, then a health care service provider is required to transmit this information to a person qualified to avail of the benefits under the law.

But it is not as simple as that.

The RH Law itself provides that the individual should be allowed to make a free and informed choice. As a result, the government has set a self-limiting policy that it will not endorse any particular family planning method. Yet, invariably, potential beneficiaries of these programs and services will seek the advice or counsel of health care service providers as to which programs and services they should avail of.

When this occurs, can the government control the opinions that health care service providers will give the potential beneficiaries by limiting the content of such opinions? That is, can the government prevent health care service providers from giving their opinions or controlling the content of their opinions, in favor or against, a particular reproductive health service or program by mandating that only a particular opinion will comply with the "complete and correct information" standard under Section 23(a)(1) of the RH Law?

I submit that the government cannot do so without violating the Free Speech Clause.

The "complete and correct information" standard cannot be construed as covering matters regarding the professional opinions (including the opinions of a conscientious objector on religious or ethical grounds as previously discussed) of health service providers, either for or against, these programs and services because this would constitute an abridgement of freedom of speech through subsequent punishment. The government cannot curtail such opinions without showing a clear and present danger that will bring about the substantive evils that Congress has a right to prevent.[69] In the case at bar, there is no attempt on the part of the government to satisfy the clear and present danger test. Consequently, the "complete and correct information" standard under Section 23(a)(1) should be narrowly construed in order not to violate the Free Speech Clause. As earlier noted, the only way to save it from constitutional infirmity is to construe the "complete and correct information" standard as referring to information containing the *list* of the government's reproductive health programs and services under the RH Law. Anything beyond that would transgress the free speech guarantee of the Constitution.

Indubitably, an expansive and broad interpretation of the "complete and correct information" standard will give the government the unbridled capacity to censor speech by only allowing opinions on the reproductive health programs and services under the RH Law which it favors. The government can use the "complete and correct information" standard to force health care service providers to endorse the former's preferred family planning method despite the clear policy of the RH Law granting free and informed choice to the individual. This cannot be done without violating the Free Speech Clause.

Of course, this would mean that health care service providers, who are for or against certain programs and services under the RH Law, will be able to influence potential beneficiaries over which family planning method or means to avail of. This is the price of living in a democratic polity, under our constitutional order, where opinions are freely expressed and exchanged. The Constitution

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[69] *See* Cruz, Constitutional Law (2007), at 213-215.

guarantees freedom of speech and, thus, tilts the balance in favor of the individual's right to free speech unless the State can show that controlling the individual's speech can pass the clear and present danger test. Here, as afore-stated, the government has failed to satisfy this test. If the government desires to push a preferred family planning method, it has the full machinery of the State to back up its information campaign under Section 20 of the RH Law. However, it cannot force individual health care service providers, under pain of penal liability, to express opinions that are favorable to certain reproductive health programs and services under the RH Law. Government may try to convince health care service providers, but not force them.

The above disquisition should not, of course, be taken to mean that health care service providers shall be exempt from their professional or ethical responsibilities which they owe to their patients and which may result to administrative, civil or criminal liabilities of the former based on their code of ethical conduct not unlike the code of ethics for lawyers. But, unavoidably, the professional opinion or advice of health care service providers will be sought by potential beneficiaries under the RH Law and, in that instance, the "complete and correct information" standard cannot be utilized by the State to curtail the health care service provider's freedom of speech.

Thus, I find that the "complete and correct information" standard under Section 23(a)(1) of the RH Law and, hence, the duty to inform (as discussed in a previous subsection) is constitutional *only insofar* as it requires health care service providers to provide a *list* of the government's reproductive health programs and services under the RH Law to qualified beneficiaries. Further, given the afore-discussed peculiar circumstances of this case and in order to adequately protect the right to free speech of health care service providers, it is necessary for the Court to issue an order directing the DOH to generate the complete and correct list of the government's reproductive health programs and services under the RH Law *which will serve as the* ***template*** *for the "complete and correct information" standard and, hence, the duty to inform under Section 23(a)(1) of the RH Law.* The DOH should be directed to distribute this template to all health care service providers covered by the RH Law. This will forestall any confusion on the nature and scope of the "complete and correct information" standard which is necessary given the penal clause under the duty to inform.

## 7- Equal Protection

I agree with the *ponencia* that the RH Law does not violate the equal protection clause insofar as it is claimed to single out the poor to reduce their numbers and that the poor may be the subject of government subsidy for the programs under the RH Law for reasons stated in *ponencia*.

## 8. Section 7 (Involuntary Servitude)

I am fully in accord with the ruling of the *ponencia* that Section 17 of the RH Law does not violate the constitutional prohibition against involuntary servitude and that it is unconstitutional *insofar* as it imposes a duty to conscientious objectors to render *pro bono* reproductive health care services to which the conscientious objector objects to on religious or ethical grounds for reasons stated in the *ponencia*. Corrorarily, the conscientious objector can be required to render *pro bono* reproductive health care services for as long as it involves services that he or she does not object to on religious or ethical grounds.

## 9. Delegation of Authority To The FDA

I am fully in accord with the ruling of the *ponencia* that Congress can validly delegate to the FDA the authority or power to determine whether the drugs, devices, methods or services to be used under the RH Law comply with constitutional and statutory standards for reasons stated in the *ponencia*.

## 10. Autonomy Of The Local Government Units (LGUs) And The Autonomous Region of Muslim Mindanao (ARMM)

I concur with the *ponencia* that the RH Law does not violate the local autonomy of LGUs and the ARMM guaranteed under Article II, Section 25[70] and Article X, Section 2[71] of the Constitution.

I have reservations, however, with regard to the following statements in the *ponencia*:

> In this case, a reading of the RH Law clearly shows that whether it pertains to the establishment of health care facilities, the hiring of skilled health professionals, or the training of barangay health workers, it would be the **national government** that would provide for the funding of its implementation. Local autonomy is not absolute. The national government still has the say when it comes to national priority programs which the local government is called upon to implement like the RH Law.
>
> Moreover, from the use of the word "endeavour", the local government units are merely encouraged to provide these services. There is nothing in the wording of the law which can be construed as making the availability of these services mandatory for the local government units. For said reason, it cannot be said that the RH Law amounts to an undue encroachment by the national government upon the autonomy enjoyed by the local governments.[72]

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70 The State shall ensure the autonomy of local governments.

71 The territorial and political subdivisions shall enjoy local autonomy.

72 Ponencia, p. 91.

First, under Sections 5,[73] 10[74] and 13[75] of the RH Law, the LGUs are not prevented from using their own funds to provide the specified services therein. The law appears to encourage LGUs to spend for these specified services on the assumption that the LGUs will see for themselves that these services are beneficial to them and, thus, warrant their own expenditure therefor.

Second, the use of the phrase "shall endeavor" appears only in Sections 5 and 6 of the RH Law. Sections 8,[76] 13[77] (last sentence) and 16[78] use the word "shall" relative to the duties required of the LGUs therein. Thus, the duties of the LGUs under these sections are mandatory.

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[73] SEC. 5. *Hiring of Skilled Health Professionals for Maternal Health Care and Skilled Birth Attendance.* – The LGUs **shall endeavor** to hire an adequate number of nurses, midwives and other skilled health professionals for maternal health care and skilled birth attendance to achieve an ideal skilled health professional-to-patient ratio taking into consideration DOH targets: Provided, That people in geographically isolated or highly populated and depressed areas shall be provided the same level of access to health care: Provided, further, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision. [Emphasis supplied]

[74] SEC. 10. *Procurement and Distribution of Family Planning Supplies.* – The DOH shall procure, distribute to LGUs and monitor the usage of family planning supplies for the whole country. The DOH shall coordinate with all appropriate local government bodies to plan and implement this procurement and distribution program. The supply and budget allotments shall be based on, among others, the current levels and projections of the following:
(a) Number of women of reproductive age and couples who want to space or limit their children;
(b) Contraceptive prevalence rate, by type of method used; and
(c) Cost of family planning supplies.
*Provided*, That LGUs **may** implement its own procurement, distribution and monitoring program consistent with the overall provisions of this Act and the guidelines of the DOH. [Emphasis supplied]

[75] SEC. 13. *Mobile Health Care Service.* – The national or the local government **may** provide each provincial, city, municipal and district hospital with a Mobile Health Care Service (MHCS) in the form of a van or other means of transportation appropriate to its terrain, taking into consideration the health care needs of each LGU. The MHCS shall deliver health care goods and services to its constituents, more particularly to the poor and needy, as well as disseminate knowledge and information on reproductive health. The MHCS shall be operated by skilled health providers and adequately equipped with a wide range of health care materials and information dissemination devices and equipment, the latter including, but not limited to, a television set for audio-visual presentations. All MHCS shall be operated by LGUs of provinces and highly urbanized cities. [Emphasis supplied]

[76] SEC. 8. *Maternal Death Review and Fetal and Infant Death Review.* – All LGUs, national and local government hospitals, and other public health units **shall** conduct an annual Maternal Death Review and Fetal and Infant Death Review in accordance with the guidelines set by the DOH. Such review should result in an evidence-based programming and budgeting process that would contribute to the development of more responsive reproductive health services to promote women's health and safe motherhood. [Emphasis supplied]

[77] SEC. 13. *Mobile Health Care Service.* – The national or the local government may provide each provincial, city, municipal and district hospital with a Mobile Health Care Service (MHCS) in the form of a van or other means of transportation appropriate to its terrain, taking into consideration the health care needs of each LGU. The MHCS shall deliver health care goods and services to its constituents, more particularly to the poor and needy, as well as disseminate knowledge and information on reproductive health. The MHCS shall be operated by skilled health providers and adequately equipped with a wide range of health care materials and information dissemination devices and equipment, the latter including, but not limited to, a television set for audio-visual presentations. All MHCS **shall** be operated by LGUs of provinces and highly urbanized cities. (Emphasis supplied)

[78] SEC. 16. *Capacity Building of Barangay Health Workers (BHWs).* – The DOH shall be responsible for disseminating information and providing training programs to the LGUs. The LGUs, with the technical assistance of the DOH, **shall** be responsible for the training of BHWs and other barangay volunteers on the promotion of reproductive health. The DOH shall provide the LGUs with medical supplies and equipment needed by BHWs to carry out their functions effectively: Provided, further, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision including the possible provision of additional honoraria for BHWs. (Emphasis supplied)

Third, the *ponencia's* construction of the word "endeavor" under Sections 5 and 6 of the RH Law might give the wrong impression that the LGUs are not mandated to cooperate with the national government in the implementation of the programs set under these sections. However, the framework of action of the RH Law is based, among others, on the effective partnership between the national government and LGUs.[79] In fact, the LGUs are effectively designated as implementing agencies of certain aspects of the programs under the RH Law.

In line with this policy, a more reasonable interpretation of the phrase "shall endeavor" under Sections 5 and 6 is to read it in conjunction with the *proviso* (which is identical for both sections) stating that, "Provided, further, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision." Thus, the use of the phrase "shall endeavor" should be understood as a recognition by Congress of the realities on the ground where the LGUs may not have enough funds to fulfill their mandate under these sections. However, if the national government provides for the needed funds, the LGUs cannot refuse to cooperate and do its part in the implementation of these sections. In other words, under these sections, the law mandates, not merely encourages, LGUs to fulfill their duties unless prevented from doing so for justifiable reasons such as the lack of available funds.

## 11. Natural Law

I agree with the *ponencia* that natural law may not, under the particular circumstances of this case, be used to invalidate the RH Law. However, I disagree with the following statements:

> While every law enacted by man emananted from what is perceived as natural law, the Court is not obliged to see if a statute, executive issuance or ordinance is in conformity to it. To begin with, it is not enacted by an acceptable legitimate body. Moreover, natural laws are mere thoughts and notions on inherent rights espoused by theorists, philosophers and theologists. The jurists of the philosophical school are interested in the law as an abstraction, rather than in the actual law of the past or present.[80]

These statements, I submit, are not necessary in the disposition of this case and appear to be an inaccurate description of natural law. The Court need not foreclose

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[79] Section f(3)(2), RH Law:

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

(f) The State shall promote programs that: x x x

(3) ensure effective partnership among national government, local government units (LGUs) and the private sector in the design, implementation, coordination, integration, monitoring and evaluation of people-centered programs to enhance the quality of life and environmental protection; (Emphasis supplied)

[80] Ponencia, p. 92.

the usefulness of natural law in resolving future cases. I submit that the statement that natural law is not applicable in the resolution of this particular case suffices.

**ACCORDINGLY,** I vote to **PARTIALLY GRANT** the petitions.

1. The word "primarily" in Sections 3.01(a) and 3.01(j) of the Implementing Rules and Regulations is **VOID** for contravening Section 4(a) of Republic Act No. 10354 and Article II, Section 12 of Constitution.

2. The phrase, *"Provided, further, That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible,"* in Section 7 and the phrase, *"however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible,"* in Section 23(a)(3) of Republic Act No. 10354 are **UNCONSTITUTIONAL** for violating the Free Exercise of Religion Clause under Article III, Section 5 of the Constitution. Consequently, Sections 5.24(b) to (e) and 5.25 of the Implementing Rules and Regulations, insofar as they implement the aforesaid provisions, are **VOID**.

3. The last paragraph of Section 5.24 of the Implementing Rules and Regulations is **VOID** insofar as it deprives the skilled health professionals enumerated therein of the right to conscientious objection for violating Section 4(n) in relation to Section 23(a)(3) of Republic Act No. 10354 and Equal Protection Clause under Article III, Section 1 of the Constitution.

4. Section 23(a)(2)(i) of Republic Act No. 10354 is **UNCONSTITUTIONAL** for violating the constitutional right of both spouses to found a family under Article XV, Section 3(1) of the Constitution.

5. The phrase "except when the minor is already a parent or has had a miscarriage" in Section 7 of Republic Act No. 10354 is **UNCONSTITUTIONAL** for violating the natural and primary right of parents to rear their minor children under Article II, Section 12 of the Constitution.

6. Section 17 of Republic Act No. 10354 is **UNCONSTITUTIONAL** *insofar* as it requires conscientious objectors to render *pro bono* reproductive health care services to which the conscientious objector objects to on religious or ethical grounds as a prerequisite to PhilHealth accreditation.

Pursuant to the expanded jurisdiction of this Court and its power to issue rules for the protection and enforcement of constitutional rights, the Court should issue an order:

1. **DIRECTING** the Food and Drug Administration to formulate the rules of procedure in the screening, evaluation and approval of all contraceptive drugs and devices that will be used under Republic Act No. 10354. The rules of procedure shall contain the following minimum requirements of due process: (a) publication, notice and hearing, (b) the Solicitor General shall be mandated to appear to represent the unborn and the State's interest in the protection of the life of the unborn, (c) interested parties shall be allowed to intervene, (d) the standard laid down in the Constitution, as adopted under Republic Act No. 10354, as to what constitutes allowable contraceptives shall be strictly followed, *i.e.*, those which do not harm or destroy the life of the unborn from conception/fertilization, (e) in weighing the evidence, all reasonable doubts shall be resolved in favor of the protection and preservation of the right to life of the unborn from conception/fertilization, and (f) the other requirements of administrative due process, as summarized in *Ang Tibay*, shall be complied with.

   The Food and Drug Administration is **DIRECTED** to submit these rules of procedure, within thirty (30) from receipt of this decision, for the Court's appropriate action.

2. **DIRECTING** the Food and Drug Administration to **IMMEDIATELY**, and in no case to exceed five days from the receipt of this decision, **INFORM** this Court if the contraceptives that it previously approved for use and distribution in the Philippines were screened, evaluated and/or tested against the standard laid down in the Constitution, as adopted under Republic Act No. 10354, on allowable contraceptives, *i.e.*, those which do not harm or destroy the life of the unborn from conception/fertilization; and those which do not prevent the implantation of the fertilized ovum. The contraceptive drugs and devices previously approved by the Food and Drug Administrationshould not include contraceptives which (1) do not provide a 100% guarantee of preventing fertilization and (2) has a fail-safe mechanism which destroys the fertilized ovum if fertilization occurs (*e.g.*, prevents the implantation of the fertilized ovum on the uterus).

3. **DIRECTING** the Department of Health in coordination with other concerned agencies to formulate the rules and regulations or guidelines which will govern the purchase and distribution/dispensation of the products or supplies under Section 9 of Republic Act No. 10354 covered by the certification from the Food and Drug Admnistration that said product and supply is made available on the condition that it is not to be used as an abortifacient subject to the following minimum due process requirements: (a) publication, notice and hearing, (b) the Solicitor General shall be mandated to represent the unborn and the State's interest in the protection of the life of the unborn, and (c) interested parties shall be allowed to intervene. The rules and regulations or guidelines shall provide sufficient detail as to the manner by which said product and supply shall be strictly regulated in order that they will not be used

as an abortifacient and in order to sufficiently safeguard the right to life of the unborn. Pending the issuance and publication of these rules by the Department of Health, the Temporary Restraining Order insofar as the *proviso* in Section 9 of Republic Act No. 10354, as implemented by Section 7.03 of the IRR, relative to the subject products and supplies, which are made available on the condition that they will not be used as an abortifacient, shall remain in force.

4. **DIRECTING** the Department of Health to generate the complete and correct list of the government's reproductive health programs and services under Republic Act No. 10354 which will serve as the template for the complete and correct information standard and, hence, the duty to inform under Section 23(a)(1) of Republic Act No. 10354. The Department of Health is **DIRECTED** to distribute copies of this template to all health care service providers covered by Republic Act No. 10354.

**MARIANO C. DEL CASTILLO**
*Associate Justice*