Republic of the Philippines
Supreme Court
Baguio City

EN BANC

JAMES M. IMBONG and LOVELY-ANN C. IMBONG, for themselves and in behalf of their minor children, **LUCIA CARLOS IMBONG and BERNADETTE CARLOS IMBONG** and **MAGNIFICAT CHILD DEVELOPMENT CENTER, INC.**,
Petitioners,

G.R. No. 204819

- versus -

HON. PAQUITO N. OCHOA, JR., Executive Secretary, **HON. FLORENCIO B. ABAD**, Secretary, Department of Budget and Management, **HON. ENRIQUE T. ONA**, Secretary, Department of Health, **HON. ARMIN A. LUISTRO**, Secretary, Department of Education, Culture and Sports **and HON. MANUEL A. ROXAS II**, Secretary, Department of Interior and Local Government,
Respondents.

X - X

ALLIANCE FOR THE FAMILY FOUNDATION PHILIPPINES, INC. [ALFI], represented by its President, Maria Concepcion S. Noche, Spouses Reynaldo S. Luistro & Rosie B. Luistro, Jose S. Sandejas & Elenita S.A. Sandejas, Arturo M. Gorrez & Marietta C. Gorrez, Salvador S. Mante, Jr. & Hazeleen L. Mante, Rolando M. Bautista & Maria Felisa S.

G.R. No. 204934

Bautista, Desiderio Racho & Traquilina Racho, Fernand Antonio A. Tansingco & Carol Anne C. Tansingco for themselves and on behalf of their minor children, Therese Antonette C. Tansingco, Lorenzo Jose C. Tansingco, Miguel Fernando C. Tangsingco, Carlo Josemaria C. Tansingco & Juan Paolo C. Tansingco, Spouses Mariano V. Araneta & Eileen Z. Araneta for themselves and on behalf of their minor children, Ramon Carlos Z. Araneta & Maya Angelica Z. Araneta, Spouses Renato C. Castor & Mildred C. Castor for themselves and on behalf of their minor children, Renz Jeffrey C. Castor, Joseph Ramil C. Castor, John Paul C. Castor & Raphael C. Castor, Spouses Alexander R. Racho & Zara Z. Racho for themselves and on behalf of their minor children Margarita Racho, Mikaela Racho, Martin Racho, Mari Racho & Manolo Racho, Spouses Alfred R. Racho & Francine V. Racho for themselves and on behalf of their minor children Michael Racho, Mariana Racho, Rafael Racho, Maxi Racho, Chessie Racho & Laura Racho, Spouses David R. Racho & Armilyn A. Racho for themselves and on behalf of their minor child Gabriel Racho, Mindy M. Juatas and on behalf of her minor children Elijah Gerald Juatas and Elian Gabriel Juatas, Salvacion M. Monteiro, Emily R. Laws, Joseph R. Laws & Katrina R. Laws,

Petitioners,

- versus -

HON. PAQUITO N. OCHOA, JR., Executive Secretary, **HON. ENRIQUE T. ONA**, Secretary, Department of Health, **HON. ARMIN A. LUISTRO**, Secretary, Department of Education, Culture and Sports, **HON. CORAZON SOLIMAN**, Secretary, Department of Social Welfare and Development, **HON. MANUEL A. ROXAS II**, Secretary, Department of Interior and Local Government, **HON. FLORENCIO B. ABAD**, Secretary, Department of Budget and Management, **HON. ARSENIO M. BALISACAN**, Socio-Economic Planning Secretary and NEDA Director-General, **THE PHILIPPINE COMMISSION ON WOMEN**, represented by its Chairperson, Remedios Ignacio-Rikken, **THE PHILIPPINE HEALTH INSURANCE CORPORATION**, represented by its President Eduardo Banzon, **THE LEAGUE OF PROVINCES OF THE PHILIPPINES**, represented by its President Alfonso Umali, **THE LEAGUE OF CITIES OF THE PHILIPPINES**, represented by its President Oscar Rodriguez, and **THE LEAGUE OF MUNICIPALITIES OF THE PHILIPPINES**, represented by its President Donato Marcos,
Respondents.

X - X

TASK FORCE FOR FAMILY AND LIFE VISAYAS, INC. and **VALERIANO S. AVILA**,
Petitioners,

G.R. No. 204957

- versus -

HON. PAQUITO N. OCHOA, JR., Executive Secretary; **HON. FLORENCIO B. ABAD**, Secretary, Department of Budget and Management; **HON. ENRIQUE T. ONA**, Secretary, Department of Education; and **HON. MANUEL A. ROXAS II**, Secretary, Department of Interior and Local Government,

Respondents.

X - X

SERVE LIFE CAGAYAN DE ORO CITY, INC., represented by Dr. Nestor B. Lumicao, M.D., as President and in his personal capacity, **ROSEVALE FOUNDATION INC.**, represented by Dr. Rodrigo M. Alenton, M.D., as member of the school board and in his personal capacity, **ROSEMARIE R. ALENTON, IMELDA G. IBARRA, CPA, LOVENIA P. NACES, Phd., ANTHONY G. NAGAC, EARL ANTHONY C. GAMBE and MARLON I. YAP**,

Petitioners,

G.R. No. 204988

- versus -

OFFICE OF THE PRESIDENT, SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES, HON. PAQUITO N. OCHOA, JR., Executive Secretary, **HON. FLORENCIO B. ABAD**, Secretary, Department of Budget and Management; **HON. ENRIQUE T. ONA**, Secretary, Department of Health; **HON. ARMIN A. LUISTRO**, Secretary, Department of Education and

HON. MANUEL A. ROXAS II,
Secretary, Department of Interior
and Local Government,
Respondents.
X - X

EXPEDITO A. BUGARIN, JR., **G.R. No. 205003**
Petitioner,

- versus -

OFFICE OF THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, HON. SENATE PRESIDENT, HON. SPEAKER OF THE HOUSE OF REPRESENTATIVES and **HON. SOLICITOR GENERAL**,
Respondents.
X - X

EDUARDO B. OLAGUER and **THE CATHOLIC XYBRSPACE APOSTOLATE OF THE PHILIPPINES**, **G.R. No. 205043**
Petitioners,

- versus -

DOH SECRETARY ENRIQUE T. ONA, FDA DIRECTOR SUZETTE H. LAZO, DBM SECRETARY FLORENCIO B. ABAD, DILG SECRETARY MANUEL A. ROXAS II, DECS SECRETARY ARMIN A. LUISTRO,
Respondents.
X - X

PHILIPPINE ALLIANCE OF XSEMINARIANS, INC. (PAX), herein represented by its National President, Atty. Ricardo M. Ribo, and in his own behalf, Atty. Lino E.A. Dumas, Romeo B. Almonte, Osmundo C. Orlanes, Arsenio Z. Menor, Samuel J. Yap, Jaime F. Mateo, Rolly Siguan, Dante E. **G.R. No. 205138**

Magdangal, Michael Eugenio O. Plana, Bienvenido C. Miguel, Jr., Landrito M. Diokno and Baldomero Falcone,

Petitioners,

- versus -

HON. PAQUITO N. OCHOA, JR., Executive Secretary, **HON. FLORENCIO B. ABAD**, Secretary, Department of Budget and Management, **HON. ENRIQUE T. ONA**, Secretary, Department of Health, **HON. ARMIN A. LUISTRO**, Secretary, Department of Education, **HON. MANUEL A. ROXAS II**, Secretary, Department of Interior and Local Government, **HON. CORAZON J. SOLIMAN**, Secretary, Department of Social Welfare and Development, **HON. ARSENIO BALISACAN**, Director-General, National Economic and Development Authority, **HON. SUZETTE H. LAZO**, Director-General, Food and Drugs Administration, **THE BOARD OF DIRECTORS,** Philippine Health Insurance Corporation, and **THE BOARD OF COMMISSIONERS**, Philippine Commission on Women,

Respondents.

X - X

REYNALDO J. ECHAVEZ, M.D., JACQUELINE H. KING, M.D., CYNTHIA T. DOMINGO, M.D., AND JOSEPHINE MILLADO-LUMITAO, M.D., collectively known as Doctors For Life, and **ANTHONY PEREZ, MICHAEL ANTHONY G. MAPA, CARLOS ANTONIO**

G.R. No. 205478

PALAD, WILFREDO JOSE, CLAIRE NAVARRO, ANNA COSIO, and **GABRIEL DY LIACCO** collectively known as Filipinos For Life,
Petitioners,

- versus -

HON. PAQUITO N. OCHOA, JR., Executive Secretary; **HON. FLORENCIO B. ABAD**, Secretary of the Department of Budget and Management; **HON. ENRIQUE T. ONA**, Secretary of the Department of Health; **HON. ARMIN A. LUISTRO**, Secretary of the Department of Education; and **HON. MANUEL A. ROXAS II**, Secretary of the Department of Interior and Local Government,
Respondents.

X - X

SPOUSES FRANCISCO S. TATAD AND MARIA FENNY C. TATAD & ALA F. PAGUIA, for themselves, their Posterity, and the rest of Filipino posterity
Petitioners,

G.R. No. 205491

- versus -

OFFICE OF THE PRESIDENT of the Republic of the Philippines,
Respondent.

X - X

PRO-LIFE PHILIPPINES FOUNDATION, Inc., represented by Lorna Melegrito, as Executive Director, and in her personal capacity, **JOSELYN B. BASILIO, ROBERT Z. CORTES, ARIEL A. CRISOSTOMO, JEREMY I. GATDULA, CRISTINA A. MONTES, RAUL ANTONIO A. NIDOY, WINSTON CONRAD**

G.R. No. 205720

B. PADOJINOG, RUFINO L. POLICARPIO III,
Petitioners,

- versus -

OFFICE OF THE PRESIDENT, SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES, HON. PAQUITO N. OCHOA, JR., Executive Secretary, **HON. FLORENCIO B. ABAD**, Secretary, Department of Budget and Management, **HON. ENRIQUE T. ONA**, Secretary, Department of Health, **HON. ARMIN A. LUISTRO**, Secretary, Department of Education and **HON. MANUEL A. ROXAS II**, Secretary, Department of Interior and Local Government,
Respondents.

X - X

MILLENNIUM SAINT FOUNDATION, INC., ATTY. RAMON PEDROSA, ATTY. CITA BORROMEO-GARCIA, STELLA ACEDERA, ATTY. BERTENI CATALUÑA CAUSING,
Petitioners,

G.R. No. 206355

- versus -

OFFICE OF THE PRESIDENT, OFFICE OF THE EXECUTIVE SECRETARY, DEPARTMENT OF HEALTH, DEPARTMENT OF EDUCATION,
Respondents.

X - X

JOHN WALTER B. JUAT, MARY M. IMBONG, ANTHONY VICTORIO B.

G.R. No. 207111

LUMICAO, JOSEPH MARTIN Q. VERDEJO, ANTONIA EMMA R. ROXAS and **LOTA LAT-GUERRERO,**
Petitioners

- versus -

HON. PAQUITO N. OCHOA, JR., Executive Secretary, **HON. FLORENCIO ABAD**, Secretary, Department of Budget and Management, **HON. ENRIQUE T. ONA**, Secretary, Department of Health, **HON. ARMIN A. LUISTRO**, Secretary, Department of Education, Culture and Sports **and HON. MANUEL A. ROXAS II**, Secretary, Department of Interior and Local Government,
Respondents.

X - X

COUPLES FOR CHRIST FOUNDATION, INC., SPOUSES JUAN CARLOS ARTADI SARMIENTO AND FRANCESCA ISABELLE BESINGA-SARMIENTO, AND SPOUSES LUIS FRANCIS A. RODRIGO, JR. and **DEBORAH MARIE VERONICA N. RODRIGO.**
Petitioners,

G.R. No. 207172

- versus -

HON. PAQUITO N. OCHOA, JR., Executive Secretary, **HON. FLORENCIO B. ABAD**, Secretary, Department of Budget and Management, **HON. ENRIQUE T. ONA**, Secretary, Department of Health, **HON. ARMIN A. LUISTRO**, Secretary, Department of

Education, Culture and Sports **and HON. MANUEL A. ROXAS II**, Secretary, Department of Interior and Local Government,
Respondents.

X - X

ALMARIM CENTI TILLAH and ABDULHUSSEIN M. KASHIM,
Petitioners,

- versus -

HON. PAQUITO N. OCHOA, JR., Executive Secretary, **HON. ENRIQUE T. ONA**, Secretary of the Department of Health, and **HON. ARMIN A. LUISTRO**,Secretary of the Department of Budget and Management,
Respondents.

G.R. No. 207563

Present:

SERENO, *CJ.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

April 8, 2014

x ---------- x

D E C I S I O N

MENDOZA, *J.*:

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

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

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

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

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[2] See <http://wn.com/pro-rh_bill_vs_anti-rh_bill>, last visited on November 5, 2013; See also <http://www.abs-cbnnews.com/nation/04/19/10/hontiveros-tatad-debate-rh-bill>, last visited on November 5, 2013.

[3] See <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20110321-326743/Stickers-spread-anti-RH-bill-message>, last visited on November 5, 2013; See also <http://www.gmanetwork.com/news/story/218169/news/nation/carlos-celdran-distributes-pro-rh-stickers-in-quiapo>, last visited on November 5, 2013.

[4] See <http://newsinfo.inquirer.net/241737/massive-church-rally-set-against-rh-bill>, last visited November 5, 2013; See also <http://www.splendorofthechurch.com.ph/2013/04/29/filipino-catholics-flex-muscles-in-poll-clout/>, last visited November 5, 2013.

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

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

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

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

[5] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 204819; *rollo* (G.R. No. 204819), pp. 3-32.
[6] With Prayer for the Urgent Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction; docketed as G.R. No. 204934; *rollo* (G.R. No. 204934), pp. 3-76.
[7] Also proceeding in her personal capacity a citizen and as a member of the Bar.
[8] Spouses Reynaldo S. Luistro & Rosie B. Luistro, Jose S. Sandejas & Elenita S.A. Sandejas, Arturo M. Gorrez & Marietta C. Gorrez, Salvador S. Mante, Jr. & Hazeleen L. Mante, Rolando M. Bautista & Maria Felisa S. Bautista, Desiderio Racho & Traquilina Racho, Fernand Antonio A. Tansingco & Carol Anne C. Tansingco for themselves and on behalf of their minor children, Therese Antonette C. Tansingco, Lorenzo Jose C. Tansingco, Miguel Fernando C. Tangsingco, Carlo Josemaria C. Tansingco & Juan Paolo C. Tansingco, Spouses Mariano V. Araneta & Eileen Z. Araneta for themselves and on behalf of their minor children, Ramon Carlos Z. Araneta & Maya Angelica Z. Araneta, Spouses Renato C. Castor & Mildred C. Castor for themselves and on behalf of their minor children, Renz Jeffrey C. Castor, Joseph Ramil C. Castor, John Paul C. Castor & Raphael C. Castor, Spouses Alexander R. Racho & Zara Z. Racho for themselves and on behalf of their minor children Margarita Racho, Mikaela Racho, Martin Racho, Mari Racho & Manolo Racho, Spouses Alfred R. Racho & Francine V. Racho for themselves and on behalf of their minor children Michael Racho, Mariana Racho, Rafael Racho, Maxi Racho, Chessie Racho & Laura Racho, Spouses David R. Racho & Armilyn A. Racho for themselves and on behalf of their minor child Gabriel Racho, Mindy M. Juatas and on behalf of her minor children Elijah General Juatas and Elian Gabriel Juatas, Salvacion M. Monteiro, Emily R. Laws, Joseph R. Laws & Katrina R. Laws
[9] With Prayer for Injunction; docketed as G.R. No. 204957.

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

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

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

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

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

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

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[10] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 204988; *rollo* (G.R. No. 204988), pp. 5-35.
[11] Through and together with its president Nestor B. Lumicao, M.D.
[12] Through and together with its representative/member of the school board Dr. Rodrigo M. Alenton, M.D.
[13] Rosemarie R. Alenton, Imelda G. Ibarra, Cpa, Lovenia P. Naces, Phd., Anthony G. Nagac, Earl Anthony C. Gambe And, Marlon I. Yap.
[14] Docketed as G.R. No. 205003; Petition is entitled "Petition (To Declare As Unconstitutional Republic Act No. 10354)." The petition fails to provide any description as to nature of the suit under the Rules of Court; *rollo* (G.R. No. 205003), pp. 3-40.
[15] With prayer for the issuance of a Temporary Restraining Order; docketed as G.R. No. 205043; *rollo* (G.R. No. 205043), pp. 3-16.
[16] Through its vice president and co-founder, Eduardo B.Olaguer.
[17] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 205138; *rollo* (G.R. No. 205138), pp. 3-50.
[18] Through and together with its president Atty. Ricardo M. Ribo.
[19] Atty. Lino E.A. Dumas, Romeo B. Almonte, Osmundo C. Orlanes, Arsenio Z. Menor, Samuel J. Yap, Jaime F. Mateo, Rolly Siguan, Dante E. Magdangal, Michael Eugenio O. Plana, Bienvenido C. Miguel, Jr., Landrito M. Diokno And Baldomero Falcone.
[20] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; The petition fails to provide any description as to nature of the suit under the Rules of Court; docketed as G.R. No. 205478; *rollo* (G.R. No. 205478), pp. 3-26.
[21] Jacqueline H. King, M.D., Cynthia T. Domingo, M.D., Josephine Millado-Lumitao, M.D., Anthony Perez, Michael Anthony G. Mapa, Carlos Antonio Palad, Wilfredo Jose, Claire Navarro, Anna Cosio, Gabriel Dy Liacco
[22] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 205491; *rollo* (G.R. No. 205491), pp. 3-13.

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

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

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

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

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

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

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

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[23] With Prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction; docketed as G.R. No. 205720; *rollo* (G.R. No. 205720), pp. 3-90.
[24] Through and together with its executive director, Lorna Melegrito.
[25] Joselyn B. Basilio, Robert Z. Cortes, Ariel A. Crisostomo, Jeremy I. Gatdula, Cristina A. Montes, Raul Antonio A. Nidoy, Winston Conrad B. Padojinog, Rufino L. Policarpio III.
[26] Docketed as G.R. No. 206355, *rollo* (G.R. No. 206355), pp. 3-32.
[27] Through and together with its co-petitioners, Attys. Ramon Pedrosa, Cita Borromeo-Garcia, Stella Acedera, and Berteni Cataluña Causing.
[28] With prayer for a Writ of Preliminary Injunction; docketed as G.R. No. 207111; *rollo* (G.R. No. 207111), pp. 3-51.
[29] Mary M. Imbong, Anthony Victorio B. Lumicao, Joseph Martin Q. Verdejo, Antonio Emma R. Roxas and Lota Lat-Guerrero.
[30] With prayer for a Writ of Preliminary Injunction; docketed as G.R. No. 207172; *rollo* (G.R. No. 207172), pp. 3-56.
[31] Spouses Juan Carlos Artadi Sarmiento and Francesca Isabelle Besinga-Sarmiento, and Spouses Luis Francis A. Rodrigo, Jr. and Deborah Marie Veronica N. Rodrigo.
[32] Docketed as G.R. No. 207563; *rollo* (G.R. No. 207563), pp. 3-15.
[33] *Rollo* (G.R. No. 204934), pp. 138-155.
[34] *Rollo* (G.R. No. 204819), pp. 1248-1260.

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

GROUNDS:

- The RH Law violates the **right to life** of the unborn. According to the petitioners, notwithstanding its declared policy against abortion, the implementation of the RH Law would authorize the purchase of hormonal contraceptives, intra-uterine devices and injectables which are abortives, in violation of Section 12, Article II of the Constitution which guarantees protection of both the life of the mother and the life of the unborn from conception.[35]

- The RH Law violates the **right to health** and the **right to protection against hazardous products**. The petitioners posit that the RH Law provides universal access to contraceptives which are hazardous to one's health, as it causes cancer and other health problems.[36]

- The RH Law violates the **right to religious freedom**. The petitioners contend that the RH Law violates the constitutional guarantee respecting religion as it authorizes the use of public funds for the procurement of contraceptives. For the petitioners, the use of public funds for purposes that are believed to be contrary to their beliefs is included in the constitutional mandate ensuring religious freedom.[37]

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

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

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

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

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

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

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

[39] Section 5.23 *Skilled Health Professional as a Conscientious Objector.* In order to be considered a conscientious objector, a skilled health professional shall comply with the following requirements:
a) Submission to the DOH of an affidavit stating the modern family planning methods that he or she refuses to provide and his or her reasons for objection;
b) Posting of a notice at the entrance of the clinic or place of practice, in a prominent location and using a clear/legible font, enumerating the reproductive health services he or she refuses to provide; and c) Other requirements as determined by the DOH. x x x.
Provided, That ***skilled health professionals*** who are public officers such as, but not limited to, Provincial, City, or Municipal Health Officers, medical officers, medical specialists, rural health physicians, hospital staff nurses, public health nurses, or rural health midwives, who are specifically charged with the duty to implement these Rules **cannot be considered as conscientious objectors**. x x x (Emphases Ours)

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

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

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

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

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

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

- The RH Law is **"void-for-vagueness"** in violation of the **due process** clause of the Constitution. In imposing the penalty of imprisonment and/or fine for **"any violation,"** it is **vague**

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

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

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

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

because it does not define the type of conduct to be treated as "violation" of the RH Law. [46]

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

- The RH Law violates the **right to free speech**. To compel a person to explain a full range of family planning methods is plainly to curtail his right to expound only his own preferred way of family planning. The petitioners note that although exemption is granted to institutions owned and operated by religious groups, they are still forced to refer their patients to another healthcare facility willing to perform the service or procedure.[48]

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

It is claimed that, by giving absolute authority to the person who will undergo reproductive health procedure, the RH Law forsakes any real dialogue between the spouses and impedes the right of spouses to mutually decide on matters pertaining to the overall well-being of their family. In the same breath, it is also claimed that the parents of a child who has

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

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

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

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

suffered a miscarriage are deprived of parental authority to determine whether their child should use contraceptives.[50]

- The RH Law violates the constitutional principle of non-delegation of legislative authority. The petitioners question the delegation by Congress to the FDA of the power to determine whether a product is non-abortifacient and to be included in the Emergency Drugs List *(EDL)*.[51]

- The RH Law violates the **one subject/one bill** rule provision under Section 26(1), Article VI of the Constitution.[52]

- The RH Law violates **Natural Law**.[53]

- The RH Law violates the principle of **Autonomy of Local Government Units** *(LGUs)* and the **Autonomous Region of Muslim Mindanao** *(ARMM)*. It is contended that the RH Law, providing for reproductive health measures at the local government level and the ARMM, infringes upon the powers devolved to LGUs and the ARMM under the Local Government Code and R.A. No. 9054.[54]

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

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

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

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

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

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

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

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

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

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

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

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

2013, Senator Pia Juliana S. Cayetano was also granted leave to intervene.[61]

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

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

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

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

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

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

[62] Resolution dated March 15, 2013.

[63] Resolution, dated July 16, 2013.

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

1. What is the relation of the first portion of Section 7 on Access to Family Planning to the theory that R.A. No. 10354 is an anti-poor program that seeks to reduce the population of the poor?
2. How is the second paragraph of the same section related to the proposition that R.A. No. 10354 encourages sex among minors?
3. In relation to Section 23 on Prohibited Acts, where in the law can you find the definition of the term 'health care service provider'? Is the definition of a 'public health care service provider' found in Section 4, paragraph (n) of the law sufficient for the Court to understand the meaning of a 'private health care service provider' or should the Court refer to the Implementing Rules and Regulations which refer to 'health care providers'?
4. With respect to 'health care providers' under the Implementing Rules and Regulations, does

The Status Quo Ante
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it make a difference that they are called 'health care providers' and not 'health care service providers'? Does the fact that there is a missing word indicate that there is a difference or that the tautology being proposed actually refers to different objects? If in the affirmative, is there enough basis to say that the law is a criminal statute that has sufficient definitions for purposes of punitive action?

5. In relation to Section 23(a)(1), how will the State be able to locate the programs and services on which the health care service provider has the duty to give information? If the terminology of 'health care service provider' includes 'private health care service provider', which includes private hospitals and private doctors, is the State duty-bound to consequently provide these providers with information on the programs and services that these providers should give information on?
6. As regards programs, is there a duty on the part of the State to provide a way by which private health care service providers can have access to information on reproductive health care programs as defined in Section 4, paragraph (r)? What is the implication of the fact that the law requires even private parties with the duty to provide information on government programs on the criminal liability of private health care service providers?
7. As regards services, what is the distinction between 'information' and 'services' considering that 'services' in different portions of the statute include providing of information?
8. What are the specific elements of every sub-group of crime in Section 23 and what are the legal bases for the determination of each element?
9. Are there existing provisions in other statutes relevant to the legal definitions found in R.A. No. 10354?
10. Why is there an exemption for the religious or conscientious objector in paragraph (3) of Section 23 and not in paragraphs (1) and (2)? What is the distinction between paragraph (3) and paragraphs (1) and (2)?
11. Section 23(a)(3) penalizes refusal to extend quality health care services and information 'on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work.' What if the refusal is not on account of one's marital status, gender, age, religious convictions, personal circumstances, or nature of work, or what if the refuser simply does not state the reason for the refusal? Will there still be a criminal liability under Section 23(a)(3)?
12. Still on Section (23)(a)(3) on referring a person to another facility or provider, is this the same or analogous to referral of a person to seek second opinion? What is the medical standard for the provision of a second opinion? In referring to another professional or service provider for a second opinion, is it the patient who is not comfortable with the opinion given by the first doctor that triggers the duty or option to refer? How is it different with the situation in Section 23(a)(3) when it is the doctor who is not comfortable about giving an opinion? Is the difference legally material?
13. How does Section 23, paragraph (c) relate to Article 134 the Labor Code which requires employers to provide family planning services?
14. Section 24 provides that in case the offender is a juridical person, the penalties in the statute shall be imposed on the president or any responsible officer. For each offense in Section 23, how will the corporate officer be made responsible if there is no actual participation by the hospital board directors or officers of such action? Does Section 24 in relation to Section 23 require corporate action? What is the situation being contemplated in the second paragraph of Section 24 before there can be accountability for criminal violations?
15. Section 7 provides that access of minors to information and family planning services must be with the written consent of parents or guardians. Is there a penalty in the law for those who will make these information and services (*e.g.*, contraceptives) available to minors without the parent's consent? How does this relate to Section 14 which requires the Department of Education to formulate a curriculum which 'shall be used by public schools' and 'may be adopted by private schools'? Is there a penalty for teaching sex education without the parents' or guardians' written consent? Correlatively, is there a penalty for private schools which do not teach sex education as formulated by the DepEd considering the use of the word 'may'?

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

In addition, **R.A. No. 5921**,[66] approved on June 21, 1969, contained provisions relative to "dispensing of abortifacients or anti-conceptional substances and devices." Under Section 37 thereof, it was provided that "no drug or chemical product or device capable of provoking abortion or preventing conception as classified by the Food and Drug Administration shall be delivered or sold to any person without a proper prescription by a duly licensed physician."

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

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

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

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

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

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

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

The RH Law

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

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

Prayer of the Petitioners – Maintain the *Status Quo*

The petitioners are one in praying that the entire RH Law be declared unconstitutional. Petitioner ALFI, in particular, argues that the government sponsored contraception program, the very essence of the RH Law, violates

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[69] <http://www.senate.gov.ph/publications/PB%202009-03%20-%20Promoting%20Reproductive%20Health.pdf>, last visited October 17, 2013.
[70] Held in Cairo, Egypt from September 5–13, 1994.
[71] Section 17, R.A. 9710.
[72] See <www.nscb.gov.ph/secstat/d)pop.asp>; last accessed February 20, 2014.

the right to health of women and the sanctity of life, which the State is mandated to protect and promote. Thus, ALFI prays that *"the status quo ante – the situation prior to the passage of the RH Law – must be maintained."*[73] It explains:

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

ISSUES

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

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

   1] Power of Judicial Review
   2] Actual Case or Controversy
   3] Facial Challenge
   4] Locus Standi
   5] Declaratory Relief
   6] One Subject/One Title Rule

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

   1] Right to Life
   2] Right to Health
   3] Freedom of Religion and the Right to Free Speech
   4] The Family
   5] Freedom of Expression and Academic Freedom
   6] Due Process

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

7] Equal Protection
8] Involuntary Servitude
9] Delegation of Authority to the FDA
10] Autonomy of Local Governments/ARMM

DISCUSSION

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

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

The Power of Judicial Review

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

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

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[75] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 376.
[76] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 377.
[77] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 378.
[78] G.R. No. 178552, October 5, 2010, 632 SCRA 146, 166.
[79] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 385, 387-388.
[80] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), pp.381-384.

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

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

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

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[81] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).
[82] Constitution, Art. VI, Sec. 1.
[83] Constitution, Art. VII, Sec. 1.
[84] Constitution, Art. VIII, Sec. 1.
[85] Supra note 81.
[86] See *Association of Small Landowners in the Phil., Inc., et al. v. Secretary of Agrarian Reform*, 256 Phil. 777, 799 (1989).
[87] *Francisco, Jr. v. The House of Representatives*, G.R. No. 160261, November 10, 2003, citing *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).
[88] *Garcia v. Executive Secretary*, 602 Phil. 64, 77-78 (2009).

results.[89] The Court must demonstrate its unflinching commitment to protect those cherished rights and principles embodied in the Constitution.

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

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

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

> In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. **Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.** "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to

[89] *Kida v. Senate of the Philippines*, G.R. No. 196271, October 18, 2011, 659 SCRA 270, 326-327.
[90] *Biraogo v. The Philippine Truth Commission*, G.R. No. 192935 & G.R. No. 193036, December 7, 2010, 637 SCRA 78, 177.
[91] *Tañada v. Angara*, 338 Phil. 546, 575 (1997).
[92] 453 Phil. 586 (2003).
[93] G.R. No. 188078, 25 January 2010, 611 SCRA 137.
[94] G.R No. 187167, July 16, 2011, 655 SCRA 476.

> assure that the supremacy of the Constitution is upheld." Once a "controversy as to the application or interpretation of constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide. [Emphasis supplied]

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

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

Actual Case or Controversy

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

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

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

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

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

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.[99] The rule is that courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. The controversy must be justiciable—definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof, on the other; that is, it must concern a real, tangible and not merely a theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[100]

Corollary to the requirement of an actual case or controversy is the requirement of ripeness.[101] A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed *by either branch* before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[102]

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

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[99] *Republic Telecommunications Holding, Inc. v. Santiago*, 556 Phil. 83, 91-92 (2007).
[100] *Information Technology Foundation of the Philippines v. Commission on Elections*, 499 Phil. 281, 304-305 (2005).
[101] *Lawyers Against Monopoly And Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 383.
[102] *The Province Of North Cotabato v. The Government of the Republic of the Philippines*, 589 Phil. 387, 481 (2008).
[103] Id. at 483.

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

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

Facial Challenge

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

The Court is not persuaded.

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

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[104] *Tañada v. Angara*, 338 Phil. 546, 574 (1997).
[105] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 381.
[106] See *United States v. Salerno*, 481 U.S. 739 (1987).
[107] The First Amendment of the US Constitution reads: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

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

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

Locus Standi

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

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

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[108] *Romualdez v. Commission on Elections*, 576 Phil. 357 (2008); *Romualdez v. Hon. Sandiganbayan*, 479 Phil. 265 (2004); *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001).
[109] Resolution, *Romualdez v. Commission on Elections*, 594 Phil. 305, 316 (2008).
[110] Constitution, Article VIII, Section 1.
[111] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), pp. 375-376.
[112] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), p. 384.

Locus standi or legal standing is defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act.[113] It requires a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.[114]

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

Transcendental Importance

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

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

With these said, even if the constitutionality of the RH Law may not be assailed through an "as-applied challenge, still, the Court has time and again acted liberally on the *locus standi* requirement. It has accorded certain individuals standing to sue, not otherwise directly injured or with material interest affected by a Government act, provided a constitutional issue of

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[113] *Anak Mindanao Party-List Group v. The Executive Secretary,* 558 Phil. 338, 350 (2007).
[114] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000), citing *Baker v. Carr,* 369 U.S. 186 (1962).
[115] Dissenting Opinion, J. Carpio; *Romualdez v. Commission on Elections*, 576 Phil. 357, 406 (2008).
[116] *Social Justice Society (SJS) v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, 591 Phil. 393, 404 (2008); *Tatad v. Secretary of the Department of Energy*, 346 Phil 321 (1997); *De Guia v. COMELEC*, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422.
[117] 503 Phil. 42, 53 (2005).
[118] 84 Phil. 368, 373 (1949).

transcendental importance is invoked. The rule on *locus standi* is, after all, a procedural technicality which the Court has, on more than one occasion, waived or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been directly injured by the operation of a law or any other government act. As held in *Jaworski v. PAGCOR*:[119]

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

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

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

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

Declaratory Relief

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

One Subject-One Title

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

To belittle the challenge, the respondents insist that the RH Law is not a birth or population control measure, [124] and that the concepts of "responsible parenthood" and "reproductive health" are both interrelated as they are inseparable.[125]

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

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[120] Consolidated Comment, OSG, *rollo* (G.R. No. 204819), pp. 388-389.
[121] *The Province Of North Cotabato v. The Government of the Republic of the Philippines*, supra note 102; *Ortega v. Quezon City Government*, 506 Phil. 373, 380 (2005); and *Gonzales v. Comelec*, 137 Phil. 471 (1969).
[122] Section 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.
[123] Petition, *Task Force for the Family and Life Visayas, Inc. v. Ochoa*, *rollo* (G.R. No. 204957), pp. 6-10; Petition, *Echavez v. Ochoa*, *rollo* (G.R. No. 205478), pp. 9-10.
[124] Joint Memorandum, Lagman, *rollo*, (G.R. No. 204819) pp. 212-214.
[125] Consolidated Comment, OSG, *rollo* (G.R. No. 204819, pp.389-393.

For said reason, the manifest underlying objective of the RH Law is to reduce the number of births in the country.

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

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

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

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

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

> SEC. 2. Declaration of Policy. – The State recognizes and guarantees the human rights of all persons including their right to

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

> equality and nondiscrimination of these rights, the right to sustainable human development, the right to health which includes reproductive health, the right to education and information, and the right to choose and make decisions for themselves in accordance with their religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood.

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

II - SUBSTANTIVE ISSUES:

1-The Right to Life

Position of the Petitioners

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

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

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

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

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

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

Position of the Respondents

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

According to the OSG, Congress has made a legislative determination that contraceptives are not abortifacients by enacting the RH Law. As the RH Law was enacted with due consideration to various studies and consultations with the World Health Organization *(WHO)* and other experts in the medical field, it is asserted that the Court afford deference and respect to such a

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

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

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

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

determination and pass judgment only when a particular drug or device is later on determined as an abortive.[135]

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

The Court's Position

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

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

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

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

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[135] Consolidated Comment, OSG, *rollo*, (G.R. No. 204819), pp. 396-410.
[136] Comment-In-Intervention, Lagman, *rollo*, (G.R. No. 204819), pp. 225-342.
[137] Article 3, Universal Declaration of Human Rights.
[138] See Republic Act No. 4729, dated June 18, 1966.
[139] See http://www.pop.org/content/coercive-population-ploys-in-philippines-1428, last visited October 17, 2013.

reproductive health.[140]

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

When Life Begins[*]

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

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

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

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

Textually, the Constitution affords protection to the unborn from conception. This is undisputable because before conception, there is no unborn to speak of. For said reason, it is no surprise that the Constitution is mute as to any proscription prior to conception or when life begins. The

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[140] <http://www.senate.gov.ph/publications/PB%202009-03%20-%20Promoting%20Reproductive%20Health.pdf>, last visited October 17, 2013.

[141] <http://www.pop.org/content/coercive-population-ploys-in-philippines-1428>

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

problem has arisen because, amazingly, there are quarters who have conveniently disregarded the scientific fact that conception is reckoned from fertilization. They are waving the view that life begins at implantation. Hence, the issue of when life begins.

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

Plain and Legal Meaning

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

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

In conformity with the above principle, the traditional meaning of the

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

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

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

word "conception" which, as described and defined by all reliable and reputable sources, means that life begins at fertilization.

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

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

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

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

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

Intent of the Framers

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

> **Rev. Rigos:** In Section 9, page 3, there is a sentence which reads:

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[145] Webster's Third International Dictionary, 1993 Edition, p. 469.
[146] Black's Law Dictionary, Fifth Edition, p. 262.
[147] G.R. No. 182836, October 13, 2009, 618 Phil. 634 (2009).
[148] *Gonzales v. Carhart* (Nos. 05-380 and 05-1382), No. 05–380, 413 F. 3d 791; 05–1382, 435 F. 3d 1163,
[149] http://www.law.cornell.edu/supct/html/05-380.ZO.html, last visited February 15, 2014.

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

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

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

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

> **Mr. Tingson:** x x x x the phrase from the moment of conception" was described by us here before with the scientific

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[150] Record of the Constitutional Commission, Volume 4, September 16, 1986, p. 668.
[151] Record of the Constitutional Commission, Volume 4, September 12, 1986, p. 596.

phrase "fertilized ovum" may be beyond the comprehension of some people; we want to use the simpler phrase "from the moment of conception."[152]

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

Rev. Rigos: Yes, we think that the word "unborn" is sufficient for the purpose of writing a Constitution, without specifying "from the moment of conception."

Mr. Davide: I would not subscribe to that particular view because according to the Commissioner's own admission, he would leave it to Congress to define when life begins. So, Congress can define life to begin from six months after fertilization; and that would really be very, very, dangerous. It is now determined by science that life begins from the moment of conception. There can be no doubt about it. So we should not give any doubt to Congress, too.[153]

Upon further inquiry, it was asked:

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

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

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

Mr. Villegas: **Yes, the ovum is fertilized by the sperm.**

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

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[152] Record of the Constitutional Commission, Volume 4, September 12, 1986, p. 669.
[153] Record of the Constitutional Commission, Volume 4, September 19, 1986, p. 800.

Mr. Villegas: Yes, if that physical fact is established, then that is what is called abortifacient and, therefore, would be unconstitutional and should be banned under this provision.

Mr. Gascon: Yes. So my point is that **I do not think it is up to Congress to state whether or not these certain contraceptives are abortifacient**. Scientifically and based on the provision as it is now proposed, they are already considered abortifacient.[154]

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

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

As emphasized by the Framers of the Constitution:

xxx xxx xxx xxx

Mr. Gascon: x x x x. As I mentioned in my speech on the US bases, I am pro-life, to the point that I would like not only to protect the life of the unborn, but also the lives of the millions of people in the world by fighting for a nuclear-free world. I would just like to be assured of the legal and pragmatic implications of the term "protection of the life of the unborn from the moment of conception." I raised some of these implications this afternoon when I interjected in the interpellation of Commissioner Regalado. I would like to ask that question again for a categorical answer.

I mentioned that if we institutionalize the term "the life of

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

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

Mr. Azcuna: **No, Mr. Presiding Officer, because contraceptives would be preventive. There is no unborn yet. That is yet unshaped.**

Mr. Gascon: Yes, Mr. Presiding Officer, but I was speaking more about some contraceptives, such as the intra-uterine device which actually stops the egg which has already been fertilized from taking route to the uterus. So if we say "from the moment of conception," what really occurs is that some of these contraceptives will have to be unconstitutionalized.

Mr. Azcuna: **Yes, to the extent that it is after the fertilization.**

Mr. Gascon: Thank you, Mr. Presiding Officer.[156]

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

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

Justice Bersamin:
There is no life.

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

Justice Bersamin:
To be protected.

Atty. Noche:
Under Section 12, yes.

Justice Bersamin:
So you have no objection to condoms?

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

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[156] Record of the Constitutional Commission, Volume 4, September 17, 1986, p. 745.
[157] TSN, July 9, 2013, pp. 23-24.

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

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

Justice Bersamin:
Alright.

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

Medical Meaning

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

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

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

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[158] Id.
[159] 4th Edition, p. 375
[160] Id, p. 609
[161] Sumpaico, Gutierrez, Luna, Pareja, Ramos and Baja-Panlilio, 2nd Edition, (2002), pp. 76-77.
[162] Moore, Persaud, Torchia, The Developing Human: Clinically Oriented Embryology, International Edition, 9th Edition (2013), pp. 1-5, 13.

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

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

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

Conclusion: The Moment of Conception is Reckoned from Fertilization

In all, whether it be taken from a plain meaning, or understood under medical parlance, and more importantly, following the intention of the

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

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

Framers of the Constitution, the undeniable conclusion is that a zygote is a human organism and that the life of a new human being commences at a scientifically well-defined moment of conception, that is, **upon fertilization**.

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

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

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

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

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

The RH Law and Abortion

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

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[165] Comment-In-Intervention, Lagman, *rollo*, (G.R. No. 204819), pp. 225-342.
[166] Id.
[167] Id.
[168] See <http://americanpregnancy.org/duringpregnancy/fetaldevelopment1.htm>, last visited April 7, 2014.

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

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

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

> 1] x x x.
>
> Section 4. *Definition of Terms.* – For the purpose of this Act, the following terms shall be defined as follows:
>
> x x x.
>
> (q) *Reproductive health care* refers to the access to a full range of methods, facilities, services and supplies that contribute to reproductive health and well-being by addressing reproductive health-related problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations. The elements of reproductive health care include the following:
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> x x x.
>
> (3) Proscription of **abortion** and management of **abortion** complications;
>
> x x x.
>
> 2] x x x.
>
> Section 4. x x x.
>
> (s) *Reproductive health rights* refers to the rights of individuals and couples, to decide freely and responsibly whether or not to have children; the number, spacing and

[169] Joint Memorandum of the House of Representatives and Respondent-Intervenor Rep. Edcel C. Lagman), Section 40, Rollo, G.R. No. 204819, p. 2343.
[170] Concurring Opinion (Justice Carpio), p. 3.

> timing of their children; to make other decisions concerning reproduction, free of discrimination, coercion and violence; to have the information and means to do so; and to attain the highest standard of sexual health and reproductive health: *Provided, however,* **That reproductive health rights do not include abortion, and access to abortifacients.**
>
> 3] x x x.
>
> SEC. 29. *Repealing Clause.* – **Except for prevailing laws against abortion**, any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or is inconsistent with the provisions of this Act including Republic Act No. 7392, otherwise known as the Midwifery Act, is hereby repealed, modified or amended accordingly.

The RH Law and Abortifacients

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

> Section 4. *Definition of Terms* – x x x x
>
> (a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA.

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

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

upon determination of the FDA.

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

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

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

Proviso Under Section 9 of the RH Law

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

Pursuant to its declared policy of providing access only to safe, legal

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

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

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

Abortifacients under the RH-IRR

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

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

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

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

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

> j) *Contraceptive* refers to any safe, legal, effective and scientifically proven modern family planning method, device, or health product, whether natural or artificial, that prevents pregnancy but does not

> **primarily** destroy a fertilized ovum or prevent a fertilized ovum from being implanted in the mother's womb in doses of its approved indication as determined by the Food and Drug Administration (FDA).

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

This cannot be done.

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

Evidently, with the addition of the word "primarily," in Section 3.01(a) and (j) of the RH-IRR is indeed *ultra vires*. It contravenes Section 4(a) of the RH Law and should, therefore, be declared invalid. There is danger that the insertion of the qualifier "primarily" will pave the way for the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution. With such qualification in the RH-IRR, it appears to insinuate that a contraceptive will only be considered as an "abortifacient" if its sole known effect is abortion or, as pertinent here, the prevention of the implantation of the fertilized ovum.

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

Also, as discussed earlier, Section 9 calls for the certification by the FDA that these contraceptives cannot act as abortive. With this, together with the definition of an abortifacient under Section 4 (a) of the RH Law and its declared policy against abortion, the undeniable conclusion is that contraceptives to be included in the PNDFS and the EDL will not only be those contraceptives that do not have the ***primary action*** of causing abortion

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

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

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

x x x x

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

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

or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb, but also those that do not have the ***secondary action*** of acting the same way.

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

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

2-The Right to Health

The petitioners claim that the RH Law violates the right to health because it requires the inclusion of hormonal contraceptives, intrauterine devices, injectables and family products and supplies in the National Drug Formulary and the inclusion of the same in the regular purchase of essential medicines and supplies of all national hospitals.[176] Citing various studies on the matter, the petitioners posit that the risk of developing **breast and cervical cancer** is greatly increased in women who use oral contraceptives as compared to women who never use them. They point out that the risk is decreased when the use of contraceptives is discontinued. Further, it is contended that the use of combined oral contraceptive pills is associated with a threefold increased risk of **venous thromboembolism**, a twofold increased risk of **ischematic stroke**, and an indeterminate effect on risk of

[175] Separate Opinion (Justice Del Castillo), p. 19.
[176] Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa, rollo* (G.R. No. 204934), pp. 26-28; Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa, rollo,* (G.R. No. 204988), pp. 15-16; Petition, *Echavez v. Ochoa, rollo* (G.R. No. 205478), pp. 13-14; Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa, rollo* (G.R. No. 205720), pp. 30-35.

myocardial infarction.[177] Given the definition of "reproductive health" and "sexual health" under Sections 4(p)[178] and (w)[179] of the RH Law, the petitioners assert that the assailed legislation only seeks to ensure that women have pleasurable and satisfying sex lives.[180]

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

The Court's Position

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

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

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

> HEALTH
>
> Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services

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

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

x x x x

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

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

x x x x

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

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

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

> available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.
>
> Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country's health needs and problems.
>
> Section 13. The State shall establish a special agency for disabled person for their rehabilitation, self-development, and self-reliance, and their integration into the mainstream of society.

Finally, Section 9, Article XVI provides:

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

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

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

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[182] *Gamboa v. Finance Secretary*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 738-739.
[183] 335 Phil. 82 (1997).

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

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

> **D. Contraceptives cannot be dispensed and used without prescription**
>
> 108. As an added protection to voluntary users of contraceptives, the same cannot be dispensed and used without prescription.
>
> 109. Republic Act No. 4729 or "An Act to Regulate the Sale, Dispensation, and/or Distribution of Contraceptive Drugs and Devices" and Republic Act No. 5921 or "An Act Regulating the Practice of Pharmacy and Setting Standards of Pharmaceutical Education in the Philippines and for Other Purposes" are **not repealed** by the RH Law and the provisions of said Acts are **not inconsistent** with the RH Law.
>
> 110. Consequently, the sale, distribution and dispensation of contraceptive drugs and devices are particularly governed by RA No. 4729 which provides in full:
>
> > "Section 1. It shall be unlawful for any person, partnership, or corporation, to sell, dispense or otherwise distribute whether for or without consideration, any contraceptive drug or device, unless such sale, dispensation or distribution is by a

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

> duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner.
>
> "Sec. 2. For the purpose of this Act:
>
> "(a) "Contraceptive drug" is any medicine, drug, chemical, or portion which is used exclusively for the purpose of preventing fertilization of the female ovum: and
>
> "(b) "Contraceptive device" is any instrument, device, material, or agent introduced into the female reproductive system for the primary purpose of preventing conception.
>
> "Sec. 3 Any person, partnership, or corporation, violating the provisions of this Act shall be punished with a fine of not more than five hundred pesos or an imprisonment of not less than six months or more than one year or both in the discretion of the Court.
>
> "This Act shall take effect upon its approval.
>
> "**Approved**: June 18, 1966"

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

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

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

In Re: Section 10 of the RH Law:

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

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

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

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

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

(c) Cost of family planning supplies.

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

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

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

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

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

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

3 -Freedom of Religion and the Right to Free Speech

Position of the Petitioners:

1. On Contraception

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

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

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

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

2. On Religious Accommodation and The Duty to Refer

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

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

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

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

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[190] Joint Memorandum, Imbong/Luat, *rollo* (G.R. No. 204819), p. 2615.
[191] Joint Memorandum, Imbong/Luat, *rollo* (G.R. No. 204819), pp. 2616-2621.
[192] Petition, *Echavez v. Ochoa*, *rollo* (G.R. No. 205478), pp. 6-7.
[193] Petition, *Couples for Christ Foundation, Inc. v. Ochoa*, *rollo* (G.R. No. 207172), pp. 20-23.

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

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

The Respondents' Positions

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

The respondents add that by asserting that only natural family planning should be allowed, the petitioners are effectively going against the constitutional right to religious freedom, the same right they invoked to

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[194] Petition, *Couples for Christ Foundation, Inc. v. Ochoa*, *rollo* (G.R. No. 207172), pp. 20-23.
[195] Petition, *Alliance for the Family Foundation, Inc. (ALFI) v. Ochoa*, *rollo* (G.R. No. 204934), pp. 35-37.; Petition, *Millennium Saint Foundation, Inc. v. Office of the President*, *rollo* (G.R. No. 206355), pp. 17-18.
[196] Memorandum, Cayetano, *rollo* (G.R. No. 204819), p. 3050; Comment-in-Intervention, Cabral, *rollo* (G.R. No. 204819), p. 511.
[197] Memorandum, OSG, *rollo* (G.R. No. 204819), p. 2677.
[198] Memorandum, Cayetano, *rollo* (G.R. No. 204819), p. 3050.
[199] Joint Memorandum Lagman, *rollo* (G.R. No. 204819), p. 2361.

assail the constitutionality of the RH Law.[200] In other words, by seeking the declaration that the RH Law is unconstitutional, the petitioners are asking that the Court recognize only the Catholic Church's sanctioned natural family planning methods and impose this on the entire citizenry.[201]

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

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

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

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[200] Memorandum. C4RH, *rollo* (G.R. No. 204819), p. 2189; Memorandum, Cayetano, *rollo* (G.R. No. 204819), p. 3050-3051.
[201] Memorandum, Cayetano, *rollo* (G.R. No. 204819), p. 3050.
[202] Memorandum, OSG, *rollo* (G.R. No. 204819), p. 2677.
[203] Memorandum, OSG, *rollo* (G.R. No. 204819), p. 2679.
[204] Memorandum, OSG, *rollo* (G.R. No. 204819), p. 2679.

The Church and The State

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[206] Gorospe, Constitutional Law, Vol. I, p. 1007
[207] Bernas, The 1987 Constitution, 2009 Ed., p. 330
[208] Gorospe, Constitutional Law, Vol. I, p. 1066
[209] 59 SCRA 54 (1974).

> deny government the power to use either the carrot or the stick to influence individual religious beliefs and practices.[210]

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

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

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

Legislative Acts and the Free Exercise Clause

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

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

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[210] *Escritor v. Estrada*, A.M. No. P-02-1651, June 22, 2006, 525 Phil. 110, 140-141 (2006).
[211] 106 Phil. 2 (1959).
[212] *Gerona v. Secretary of Education*, 106 Phil. 2, 9-10 (1959).
[213] *Ebralinag v. Division Superintendent of Schools*, 219 SCRA 256 (1993), March 1, 1993.
[214] 525 Phil. 110 (2006).
[215] Id. at 137.
[216] Id. at 148.

> an exemption from its application or its 'burdensome effect,' whether by the legislature or the courts."[217]

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

> Philippine jurisprudence articulates several tests to determine these limits. Beginning with the first case on the Free Exercise Clause, *American Bible Society*, the Court mentioned the "**clear and present danger**" test but did not employ it. Nevertheless, this test continued to be cited in subsequent cases on religious liberty. The *Gerona* case then pronounced that the test of permissibility of religious freedom is whether it violates the established institutions of society and law. The *Victoriano* case mentioned the "**immediate and grave danger**" test as well as the doctrine that a law of general applicability may burden religious exercise provided the law is the least restrictive means to accomplish the goal of the law. The case also used, albeit inappropriately, the "**compelling state interest**" test. After *Victoriano*, *German* went back to the *Gerona* rule. *Ebralinag* then employed the "**grave and immediate danger**" test and overruled the *Gerona* test. The fairly recent case of *Iglesia ni Cristo* went back to the "**clear and present danger**" test in the maiden case of *American Bible Society*. **Not surprisingly, all the cases which employed the "clear and present danger" or "grave and immediate danger" test involved, in one form or another, religious speech as this test is often used in cases on freedom of expression.** On the other hand, the *Gerona* and *German* cases set the rule that religious freedom will not prevail over established institutions of society and law. *Gerona*, however, which was the authority cited by *German* has been overruled by *Ebralinag* which employed the "**grave and immediate danger**" test. *Victoriano* was the only case that employed the "**compelling state interest**" test, but as explained previously, the use of the test was inappropriate to the facts of the case.
>
> The case at bar does not involve speech as in *American Bible Society*, *Ebralinag* and *Iglesia ni Cristo* where the "**clear and present danger**" and "**grave and immediate danger**" tests were appropriate as speech has easily discernible or immediate effects. The *Gerona* and *German doctrine*, aside from having been overruled, is not congruent with the **benevolent neutrality** approach, thus not appropriate in this jurisdiction. Similar to *Victoriano*, the present case involves purely conduct arising from religious belief. **The "compelling state interest" test is proper where conduct is**

[217] Id. at 149.
[218] Id. at 175.
[219] Id. at 168-169.

> **involved for the whole gamut of human conduct has different effects on the state's interests: some effects may be immediate and short-term while others delayed and far-reaching.** A test that would protect the interests of the state in preventing a substantive evil, whether immediate or delayed, is therefore necessary. However, not any interest of the state would suffice to prevail over the right to religious freedom as this is a fundamental right that enjoys a preferred position in the hierarchy of rights - "the most inalienable and sacred of all human rights", in the words of Jefferson. This right is sacred for an invocation of the Free Exercise Clause is an appeal to a higher sovereignty. The entire constitutional order of limited government is premised upon an acknowledgment of such higher sovereignty, thus the Filipinos implore the "aid of Almighty God in order to build a just and humane society and establish a government." As held in *Sherbert*, only the gravest abuses, endangering **paramount interests** can limit this fundamental right. A mere balancing of interests which balances a right with just a colorable state interest is therefore not appropriate. Instead, **only a compelling interest of the state can prevail over the fundamental right to religious liberty. The test requires the state to carry a heavy burden, a compelling one, for to do otherwise would allow the state to batter religion, especially the less powerful ones until they are destroyed. In determining which shall prevail between the state's interest and religious liberty, reasonableness shall be the guide.** The **"compelling state interest" serves the purpose of revering religious liberty while at the same time affording protection to the paramount interests of the state.** This was the test used in *Sherbert* which involved conduct, *i.e.* refusal to work on Saturdays. In the end, the "compelling state interest" test, by upholding the paramount interests of the state, seeks to protect the very state, without which, religious liberty will not be preserved. [Emphases in the original. Underlining supplied.]

The Court's Position

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

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

religious freedom.

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

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

> 6. Active participation by nongovernment organizations (NGOs), women's and people's organizations, civil society, **faith-based organizations, the religious sector** and communities is crucial to ensure that reproductive health and population and development policies, plans, and programs will address the priority needs of women, the poor, and the marginalized. [Section 3(i)]
>
> 7] Responsible parenthood refers to the will and ability of a parent to respond to the needs and aspirations of the family and children. It is likewise a shared responsibility between parents to determine and achieve the desired number of children, spacing and timing of their children according to their own family life aspirations, taking into account psychological preparedness, health status, sociocultural and economic concerns **consistent with their religious convictions**. [Section 4(v)] (Emphases supplied)

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

The Establishment Clause and Contraceptives

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

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

The Free Exercise Clause and the Duty to Refer

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

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

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

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

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

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

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

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

In case of conflict between the religious beliefs and moral convictions of individuals, on one hand, and the interest of the State, on the other, to provide access and information on reproductive health products, services, procedures and methods to enable the people to determine the timing, number and spacing of the birth of their children, the Court is of the strong view that the religious freedom of health providers, whether public or private, should be accorded primacy. Accordingly, a *conscientious objector* should be exempt from compliance with the mandates of the RH Law. If he would be compelled to act contrary to his religious belief and conviction, it would be violative of "the principle of non-coercion" enshrined in the constitutional right to free exercise of religion.

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

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

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[223] *Separate Opinion,Cruz, Ebralinag v. Division Superintendent of Schools*, 219 SCRA 256 (1993), March 1, 1993.
[224] *Estrada v. Escritor*, supra note 220, at 537.
[225] 20130 CSIH 36.
[226] http://www.skepticink.com/tippling/2013/05/05/conscientious-objection-to-abortion-catholic-midwives-win-appeal/; last visited February 22, 2014
[227] http://ukhumanrightsblog.com/2013/05/03/conscientious-objection-to-abortion-catholic-midwives-win-appeal; last visited February 22, 2014

Institutional Health Providers

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

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

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

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

The Implementing Rules and Regulation (RH-IRR)

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

> Provided, That **skilled health professional such as provincial, city or municipal health officers, chiefs of hospital, head nurses,**

[228] 453 Phil. 440 (2003).

> **supervising midwives**, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules, **cannot be considered as conscientious objectors.**

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

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

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

> **Justice Mendoza:**
> I'll go to another point. The RH law...in your Comment- in-Intervention on page 52, you mentioned RH Law is replete with provisions in upholding the freedom of religion and respecting religious convictions. Earlier, you affirmed this with qualifications. Now, you have read, I presumed you have read the IRR-Implementing Rules and Regulations of the RH Bill?
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> **Congressman Lagman:**
> Yes, Your Honor, I have read but I have to admit, it's a long IRR and I have not thoroughly dissected the nuances of the provisions.
>
> **Justice Mendoza:**
> I will read to you one provision. It's Section 5.24. This I cannot find in the RH Law. But in the IRR it says: "....skilled health

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

professionals such as provincial, city or municipal health officers, chief of hospitals, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules, cannot be considered as conscientious objectors." Do you agree with this?

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

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

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

Compelling State Interest

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

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

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

Senior State Solicitor Hilbay:
Yes, Justice.

Justice De Castro:
...which you are discussing awhile ago with Justice Abad. What is

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

> the compelling State interest in imposing this duty to refer to a conscientious objector which refuses to do so because of his religious belief?
>
> **Senior State Solicitor Hilbay:**
> Ahh, Your Honor,..
>
> **Justice De Castro:**
> What is the compelling State interest to impose this burden?
>
> **Senior State Solicitor Hilbay:**
> In the first place, Your Honor, **I don't believe that the standard is a compelling State interest,** this is an ordinary health legislation involving professionals. This is not a free speech matter or a pure free exercise matter. This is a regulation by the State of the relationship between medical doctors and their patients.[231]

Resultantly, the Court finds **no compelling state interest** which would limit the free exercise clause of the **conscientious objectors**, however few in number. Only the prevention of an immediate and grave danger to the security and welfare of the community can justify the infringement of religious freedom. If the government fails to show the seriousness and immediacy of the threat, State intrusion is constitutionally unacceptable.[232]

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

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

Moreover, granting that a compelling interest exists to justify the infringement of the conscientious objector's religious freedom, the respondents have failed to demonstrate "the gravest abuses, endangering paramount interests" which could limit or override a person's fundamental

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

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

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

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

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

> **Section 17. *Women's Right to Health.*** - (a) Comprehensive Health Services. - The State shall, at all times, provide for a comprehensive, culture-sensitive, and gender-responsive health services and programs covering all stages of a woman's life cycle and which addresses the major causes of women's mortality and morbidity: *Provided,* That in the provision for comprehensive health services, due respect shall be accorded to women's religious convictions, the rights of the spouses to found a family in accordance with their religious convictions, and the demands of responsible parenthood, and the right of women to protection from hazardous drugs, devices, interventions, and substances.
>
> Access to the following services shall be ensured:
>
> (1) Maternal care to include pre- and post-natal services to address pregnancy and infant health and nutrition;
>
> (2) Promotion of breastfeeding;
>
> (3) Responsible, ethical, legal, safe, and effective methods of family planning;
>
> (4) Family and State collaboration in youth sexuality education and health services without prejudice to the

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

primary right and duty of parents to educate their children;

(5) Prevention and management of reproductive tract infections, including sexually transmitted diseases, HIV, and AIDS;

(6) Prevention and management of reproductive tract cancers like breast and cervical cancers, and other gynecological conditions and disorders;

(7) Prevention of abortion and management of pregnancy-related complications;

(8) In cases of violence against women and children, women and children victims and survivors shall be provided with comprehensive health services that include psychosocial, therapeutic, medical, and legal interventions and assistance towards healing, recovery, and empowerment;

(9) Prevention and management of infertility and sexual dysfunction pursuant to ethical norms and medical standards;

(10) Care of the elderly women beyond their child-bearing years; and

(11) Management, treatment, and intervention of mental health problems of women and girls. In addition, healthy lifestyle activities are encouraged and promoted through programs and projects as strategies in the prevention of diseases.

(b) Comprehensive Health Information and Education. - The State shall provide women in all sectors with appropriate, timely, complete, and accurate information and education on all the above-stated aspects of women's health in government education and training programs, with due regard to the following:

(1) The natural and primary right and duty of parents in the rearing of the youth and the development of moral character and the right of children to be brought up in an atmosphere of morality and rectitude for the enrichment and strengthening of character;

(2) The formation of a person's sexuality that affirms human dignity; and

(3) Ethical, legal, safe, and effective family planning methods including fertility awareness.

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

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

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

Exception: Life Threatening Cases

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

In a conflict situation between the life of the mother and the life of a

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

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

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

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

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

child, the doctor is morally obliged always to try to save both lives. If, however, it is impossible, the resulting death to one should not be deliberate. Atty. Noche explained:

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

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

Family Planning Seminars

Anent the requirement imposed under Section 15[239] as a condition for the issuance of a marriage license, the Court finds the same to be a reasonable exercise of police power by the government. A cursory reading of the assailed provision bares that the religious freedom of the petitioners is not at all violated. All the law requires is for would-be spouses to attend a seminar on parenthood, family planning breastfeeding and infant nutrition. It does not even mandate the type of family planning methods to be included in the seminar, whether they be natural or artificial. As correctly noted by the OSG, those who receive any information during their attendance in the required seminars are not compelled to accept the information given to them, are completely free to reject the information they find unacceptable, and retain the freedom to decide on matters of family life without the intervention of the State.

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

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

4-The Family and the Right to Privacy

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

The Court cannot but agree.

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

ARTICLE XV
THE FAMILY

Section 1. The State recognizes the **Filipino family** as the foundation of the nation. Accordingly, it shall **strengthen its solidarity** and actively promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be **protected by the State.**

Section 3. The State shall defend:

The **right of spouses to found a family in accordance with their religious convictions** and the demands of responsible parenthood;

The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development;

The right of the family to a family living wage and income; and

The right of families or family associations **to participate in the planning and implementation of policies and programs that affect them.**

In this case, the RH Law, in its not-so-hidden desire to control population growth, contains provisions which tend to wreck the family as a

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

solid social institution. It bars the husband and/or the father from participating in the decision making process regarding their common future progeny. It likewise deprives the parents of their authority over their minor daughter simply because she is already a parent or had suffered a miscarriage.

The Family and Spousal Consent

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

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

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

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

Decision-making involving a reproductive health procedure is a private matter which belongs to the couple, not just one of them. Any decision they would reach would affect their future as a family because the

[241] 80 CONST. Art XV, §2.

size of the family or the number of their children significantly matters. The decision whether or not to undergo the procedure belongs exclusively to, and shared by, both spouses as **one cohesive unit** as they chart their own destiny. It is a **constitutionally guaranteed private right.** Unless it prejudices the State, which has not shown any compelling interest, the State should see to it that they chart their destiny together as one family.

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

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

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

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

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[242] Separate Opinion (Justice Leonardo-De Castro), p. 42-43.
[243] 130 Phil. 415 (1968).
[244] Id. at 436.
[245] 81 *Griswold v. Connecticut*, 381 U.S. 479, June 7, 1965.

that help give them life and substance. Various guarantees create zones of privacy."[246]

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

The Family and Parental Consent

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

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

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

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

More alarmingly, it disregards and disobeys the constitutional mandate that "the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government." [247] In this regard, Commissioner Bernas wrote:

> The 1987 provision has added the adjective **"primary"** to modify the right of parents. **It imports the assertion that the right of**

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

parents is superior to that of the State.[248] [Emphases supplied]

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

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

First Exception: Access to Information

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

Second Exception: Life Threatening Cases

As in the case of the conscientious objector, an exception must be

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

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

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

5 - Academic Freedom

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

At this point, suffice it to state that any attack on the validity of Section 14 of the RH Law is ***premature*** because the Department of Education, Culture and Sports has yet to formulate a curriculum on age-appropriate reproductive health education. One can only speculate on the content, manner and medium of instruction that will be used to educate the adolescents and whether they will contradict the religious beliefs of the

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

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

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

petitioners and validate their apprehensions. Thus, considering the premature nature of this particular issue, the Court declines to rule on its constitutionality or validity.

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

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

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

While the Court notes the possibility that educators might raise their objection to their participation in the reproductive health education program

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[252] Records, 1986 Constitutional Convention, Volume IV, pp. 401-402.
[253] Article II, Section 13, 1987 Constitution.
[254] Petition, *Task Force for the Family and Life Visayas, Inc. v. Ochoa*, *rollo* (G.R. No. 204957), pp. 24-25.

provided under Section 14 of the RH Law on the ground that the same violates their religious beliefs, the Court *reserves its judgment* should an actual case be filed before it.

6 - Due Process

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

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

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

The arguments fail to persuade.

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[255] Moreover, in determining whether the words used in a statute are vague, words must not only be taken in accordance with their plain meaning alone, but also in relation to other parts of the statute. It is a rule that every part of the statute must be interpreted with reference to the context, that is, every part of it must be construed together with the other parts and kept subservient to the general intent of the whole enactment.[256]

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

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

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

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

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

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

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

> SEC. 23. *Prohibited Acts.* – The following acts are prohibited:
>
> (a) Any health care service provider, whether public or private, who shall:
>
> (1) Knowingly withhold information or restrict the

> dissemination thereof, and/or intentionally provide incorrect information regarding programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;

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

7-Equal Protection

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

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

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

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

x x x x

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

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

(f) The State shall promote programs that: (1) enable individuals and couples to have the number of

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

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

> One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause, however, to provide for a more specific guaranty against any form of undue favoritism or

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

x x x x

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

x x x x

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

x x x x

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

x x x x

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

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

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

x x x x

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

x x x x

(aa) *Sustainable human development* refers to bringing people, particularly the **poor** and vulnerable, to the center of development process, the central purpose of which is the creation of an enabling environment in which all can enjoy long, healthy and productive lives, done in the manner that promotes their rights and protects the life opportunities of future generations and the natural ecosystem on which all life depends.

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

hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.

"According to a long line of decisions, **equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed."** It "requires public bodies and institutions to treat similarly situated individuals in a similar manner." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the state's duly constituted authorities." "In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective."

The equal protection clause is aimed at all official state actions, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken.

It, however, **does not require the universal application of the laws to all persons or things without distinction**. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. "Superficial differences do not make for a valid classification."

For a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class. "The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed. It is not necessary that the classification be made with absolute symmetry, in the sense that the members of the class should possess the same characteristics in equal degree. Substantial similarity will suffice; and as long as this is achieved, all those covered by the classification are to be treated equally. The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the non-application of the law to him."

> The classification must not be based on existing circumstances only, or so constituted as to preclude addition to the number included in the class. It must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. It must not leave out or "underinclude" those that should otherwise fall into a certain classification. [Emphases supplied; citations excluded]

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

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

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

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

With respect to the exclusion of private educational institutions from the mandatory reproductive health education program under Section 14, suffice it to state that the mere fact that the children of those who are less fortunate attend public educational institutions does not amount to substantial distinction sufficient to annul the assailed provision. On the other

hand, substantial distinction rests between public educational institutions and private educational institutions, particularly because there is a need to recognize the academic freedom of private educational institutions especially with respect to religious instruction and to consider their sensitivity towards the teaching of reproductive health education.

8-Involuntary Servitude

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

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

The point of the OSG is well-taken.

It should first be mentioned that the practice of medicine is undeniably imbued with public interest that it is both a power and a duty of the State to control and regulate it in order to protect and promote the public welfare. Like the legal profession, the practice of medicine is not a right but a privileged burdened with conditions as it directly involves the very lives of the people. A *fortiori*, this power includes the power of Congress[263] to prescribe the qualifications for the practice of professions or trades which affect the public welfare, the public health, the public morals, and the public safety; and to regulate or control such professions or trades, even to the point of revoking such right altogether.[264]

Moreover, as some petitioners put it, the notion of involuntary servitude connotes the presence of force, threats, intimidation or other similar means of coercion and compulsion.[265] A reading of the assailed provision, however, reveals that it only *encourages* private and non-

[262] Petition, *Serve Life Cagayan De Oro City, Inc. v. Ochoa*, *rollo*, (G.R. No. 204988), pp.16-48; Petition, *Echavez v. Ochoa*, *rollo* (G.R. No. 205478), pp. 7-9.
[263] Except the practice of law which is under the supervision of the Supreme Court.
[264] *United States v. Jesus*, 31 Phil. 218, 230 (1915).
[265] Petition, *Echavez v. Ochoa*, *rollo* (G.R. No. 205478), p. 8.

government reproductive healthcare service providers to render *pro bono* service. Other than non-accreditation with PhilHealth, no penalty is imposed should they choose to do otherwise. Private and non-government reproductive healthcare service providers also enjoy the liberty to choose which kind of health service they wish to provide, when, where and how to provide it or whether to provide it all. Clearly, therefore, no compulsion, force or threat is made upon them to render pro bono service against their will. While the rendering of such service was made a prerequisite to accreditation with PhilHealth, the Court does not consider the same to be an unreasonable burden, but rather, a necessary incentive imposed by Congress in the furtherance of a perceived legitimate state interest.

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

9-Delegation of Authority to the FDA

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

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

> SEC. 4. To carry out the provisions of this Act, there is hereby created an office to be called the Food and Drug Administration (FDA) in the Department of Health (DOH). Said Administration shall be under the Office of the Secretary and shall have the following functions, powers and duties:
>
> "(a) To administer the effective implementation of this Act and of the rules and regulations issued pursuant to the same;
>
> "(b) To assume primary jurisdiction in the collection of samples of health products;

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

"(c) **To analyze and inspect health products** in connection with the implementation of this Act;

"(d) To establish analytical data to serve as basis for the preparation of health products standards, and to recommend standards of identity, purity, safety, efficacy, quality and fill of container;

"(e) To issue certificates of compliance with technical requirements to serve as basis for the issuance of appropriate authorization and spot-check for compliance with regulations regarding operation of manufacturers, importers, exporters, distributors, wholesalers, drug outlets, and other establishments and facilities of health products, as determined by the FDA;

"x x x

"(h) **To conduct appropriate tests on all applicable health products prior to the issuance of appropriate authorizations to ensure safety, efficacy, purity, and quality**;

"(i) To require all manufacturers, traders, distributors, importers, exporters, wholesalers, retailers, consumers, and non-consumer users of health products to report to the FDA any incident that reasonably indicates that said product has caused or contributed to the death, serious illness or serious injury to a consumer, a patient, or any person;

"(j) To issue cease and desist orders *motu propio* or upon verified complaint for health products, whether or not registered with the FDA *Provided*, That for registered health products, the cease and desist order is valid for thirty (30) days and may be extended for sixty (60) days only after due process has been observed;

"(k) **After due process, to order the ban, recall, and/or withdrawal of any health product found to have caused death, serious illness or serious injury to a consumer or patient, or is found to be imminently injurious, unsafe, dangerous, or grossly deceptive,** and to require all concerned to implement the risk management plan which is a requirement for the issuance of the appropriate authorization;

x x x.

As can be gleaned from the above, the functions, powers and duties of the FDA are specific to enable the agency to carry out the mandates of the law. Being the country's premiere and sole agency that ensures the safety of food and medicines available to the public, the FDA was equipped with the necessary powers and functions to make it effective. Pursuant to the principle of necessary implication, the mandate by Congress to the FDA to ensure public health and safety by permitting only food and medicines that

are safe includes "service" and "methods." From the declared policy of the RH Law, it is clear that Congress intended that the public be given only those medicines that are proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards. The philosophy behind the permitted delegation was explained in *Echagaray v. Secretary of Justice*,[267] as follows:

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

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

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

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

While the aforementioned provision charges the LGUs to take on the functions and responsibilities that have already been devolved upon them

[267] 358 Phil. 410 (1998).

from the national agencies on the aspect of providing for basic services and facilities in their respective jurisdictions, **paragraph (c) of the same provision provides a categorical exception of cases involving nationally-funded projects, facilities, programs and services.**[268] Thus:

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

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

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

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

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[268] *Pimentel, Jr. v. Executive Secretary*, G.R. No. 195770, July 17, 2012, 676 SCRA 551, 559.
[269] Id. at 559-560.
[270] Id. at 561.
[271] See Section 6, R.A. No. 10354.
[272] See Section 5, R.A. No. 10354.
[273] See Section 16, R.A. No. 1354.

The ARMM

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

11 - Natural Law

With respect to the argument that the RH Law violates natural law,[276] suffice it to say that the Court does not duly recognize it as a legal basis for upholding or invalidating a law. Our only guidepost is the Constitution. While every law enacted by man emanated from what is perceived as natural law, the Court is not obliged to see if a statute, executive issuance or ordinance is in conformity to it. To begin with, it is not enacted by an acceptable legitimate body. Moreover, natural laws are mere thoughts and notions on inherent rights espoused by theorists, philosophers and theologists. The jurists of the philosophical school are interested in the law as an abstraction, rather than in the actual law of the past or present.[277] Unless, a natural right has been transformed into a written law, it cannot serve as a basis to strike down a law. In *Republic v. Sandiganbayan*,[278] the very case cited by the petitioners, it was explained that the Court is not duty-bound to examine every law or action and whether it conforms with both the Constitution and natural law. Rather, natural law is to be used sparingly only in the most peculiar of circumstances involving rights inherent to man where

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[274] *Kida v. Senate of the Philippines*, G.R. No. 196271, October 18, 2011, 659 SCRA 270, 306.
[275] Id. at 305.
[276] Petition, *Pro-Life Philippines Foundation, Inc. v. Ochoa*, *rollo* (G.R. No. 205720), pp. 14-30.
[277] Gettel, Political Science, Revised Edition, p. 180.
[278] 454 Phil. 504 (2003).

no law is applicable.[279]

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

Facts and Fallacies
and the Wisdom of the Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:

Sinusulat ang aking Opinyong Sumasang-ayon at Sumasalungat

MARIA LOURDES P. A. SERENO
Chief Justice

See Concurring Opinion

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice
See: Separate Concurring Opn.

With separate concurring opinion:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

See concurring and dissenting

See Concurring Opinion

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

(See concurring and dissenting)

See Concurring and Dissenting Opinion

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

See separate dissent

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice