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

Promulgated:

April 8, 2014

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CONCURRING AND DISSENTING OPINION

REYES, *J.*:

I concur with the *ponencia's* declaration that Republic Act (R.A.) No. 10354, otherwise known as the Responsible Parenthood and Reproductive Health Act of 2012, perused in its entirety, is not recusant of the various rights enshrined in our Constitution. Particularly, I concur that: (1) R.A. No. 10354, in making contraceptives and other reproductive health products and services more accessible, does not run counter to the constitutional right to life; (2) R.A. No. 10354, in giving priority to the poor in the implementation of government programs to promote basic reproductive health care, does not violate the equal protection clause of the Constitution; (3) Section 9,[1] in mandating the inclusion of family planning products and supplies in the Philippine National Drug Formulary System, does not violate the right to health of the people; (4) Section 15[2] is not anathema to freedom of religion; (5) Section 17[3] does not amount to involuntary servitude; (6) the delegation by Congress to the Food and Drug Administration (FDA) of the power to determine whether a supply or product is to be included in the Essential Drugs List constitutes permissible delegation of legislative powers; and (7) Sections 5,[4]

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[1] Section 9. *The Philippine National Drug Formulary System and Family Planning Supplies.* – The National Drug Formulary shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies. The Philippine National Drug Formulary System (PNDFS) shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List (EDL) in accordance with existing practice and in consultation with reputable medical associations in the Philippines. For the purpose of this Act, any product or supply included or to be included in the EDL must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient.

These products and supplies shall also be included in the regular purchase of essential medicines and supplies of all national hospitals: *Provided, further*, That the foregoing offices shall not purchase or acquire by any means emergency contraceptive pills, postcoital pills, abortifacients that will be used for such purpose and their other forms or equivalent.

[2] Section 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.

[3] Section 17. *Pro Bono Services for Indigent Women.* – Private and nongovernment reproductive healthcare service providers including, but not limited to, gynecologists and obstetricians, are encouraged to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing information and education to rendering medical services, free of charge to indigent and low-income patients as identified through the NHTS-PR and other government measures of identifying marginalization, especially to pregnant adolescents. The forty-eight (48) hours annual *pro bono* services shall be included as a prerequisite in the accreditation under the PhilHealth.

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

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6,[5] and 16[6] do not amount to an encroachment on the autonomy of local governments.

The *ponencia* declared Section 7, insofar as it dispensed with the requirement of written parental consent for minors who are already parents or have had a miscarriage, with regard to access to modern methods of family planning, unconstitutional as it infringes on the right to privacy with respect to one's family. I agree that Section 7, **inasmuch as it dispensed with the requirement of parental consent**, is unconstitutional. Nevertheless, in addition to *ponencia's* ratiocination on the right to privacy, I would discuss further that Section 7, by dispensing with the requirement of parental consent for minors in certain cases, violates Section 12, Article II of the 1987 Constitution.

I agree with the *ponencia's* conclusion that the attack on the constitutionality of Section 14, which provides for age- and development-appropriate reproductive health education to adolescents, must fail. However, I disagree with the *ponencia* insofar as it declared that the issues raised against the constitutionality of Section 14 are premature as the Department of Education (DepEd) has yet to prepare a curriculum on age- and development-appropriate reproductive health education. The Court has already made pronouncements on the constitutionality of the other provisions of R.A. No. 10354 despite the lack of an actual case or controversy, the issues presented being matters of transcendental importance. There is thus no reason for the Court to avoid a definitive ruling on the constitutionality of Section 14. It is my view, which I will expound later, that Section 14 does not: (1) violate the academic freedom of educational institutions; (2) intrude into the natural and primary right of parents to rear their children; and (3) amount to an infringement of the freedom of religion.

I dissent, however, from the *ponencia's* conclusion that the following provisions of R.A. No. 10354 are unconstitutional:

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[5] Section 6. *Health Care Facilities.* – Each LGU, upon its determination of the necessity based on well-supported data provided by its local health office shall endeavor to establish or upgrade hospitals and facilities with adequate and qualified personnel, equipment and supplies to be able to provide emergency obstetric and newborn care: *Provided*, That people in geographically isolated or highly populated and depressed areas shall have the same level of access and shall not be neglected by providing other means such as home visits or mobile health care clinics as needed: *Provided, further*, That the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

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

(1) Section 7, insofar as it imposes on non-maternity specialty hospitals and hospitals owned and operated by a religious group the duty to refer a person seeking access to modern family planning methods to another health facility, for being violative of the freedom of religion;

(2) Section 23(a)(1), which punishes any health care service provider who withholds information or restricts the dissemination thereof regarding programs and services on reproductive health, and Section 23(a)(2), which punishes any health care service providers who refuse to perform reproductive health procedures on the ground of lack of consent or authorization in certain cases, for being violative of the freedom of religion;

(3) Section 23(a)(2)(i), which allows a married individual to undergo reproductive health procedure *sans* the consent of his/her spouse, for being contrary to one's right to privacy;

(4) Section 23(a)(3), insofar as it requires a conscientious objector to immediately refer a person seeking reproductive health care and service to another health care service provider, for being violative of the freedom of religion;

(5) Section 23(b), which punishes any public officer charged with the duty to implement the provision of R.A. No. 10354 who prohibits or restricts the delivery of reproductive health care services, and Section 5.24 of the Implementing Rules and Regulations (IRR) of R.A. No. 10354, which, *inter alia*, provides that those charged with the duty to implement the provisions of R.A. No. 10354 cannot be considered as conscientious objectors, for being violative of the freedom of religion; and

(6) Section 17, insofar as it included the rendition of at least forty-eight (48) hours annual *pro bono* reproductive health services as a prerequisite in the accreditation under PhilHealth.

Section 7, inasmuch as it dispenses with the requirement of written parental consent, violates Section 12, Article II of the Constitution.

Parents have the natural and primary right and duty to nurture their children. This right is recognized by Section 12, Article II of the Constitution, which pertinently provides that:

> Section 12. x x x The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Concomitant to their natural and primary right and duty to provide for, care, and nurture their children, parents exercise parental authority over the persons of their unemancipated children. In this regard, Article 209 of the Family Code[7] provides that:

> Article 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, **parental authority and responsibility shall include** the caring for and rearing them for civic consciousness and efficiency and the **development of their moral, mental and physical character and well-being.** (Emphasis ours)

The authority that is exercised by parents over their unemancipated children includes the right and duty to enhance, protect, preserve, and maintain their physical and mental health and to represent them in all matters affecting their interests.[8] The authority exercised by parents over their unemancipated children is terminated, *inter alia*, upon emancipation of the child.[9] Emancipation takes place upon attainment of the age of majority, which commences at the age of eighteen years.[10]

Section 7 of R.A. No. 10354 pertinently provides that:

> Section 7. *Access to Family Planning.* – All accredited public health facilities shall provide a full range of modern family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children: *Provided*, That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, except in the case of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods: *Provided, further*, That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible: *Provided, finally*, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344.
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> 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.

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7 Executive Order No. 209.
8 FAMILY CODE, Article 220(4) and (6).
9 FAMILY CODE, Article 228(3).
10 FAMILY CODE, Article 234, as amended by Republic Act No. 6809.

Section 7 seeks to make modern family planning methods more accessible to the public. The provision mandates that no person shall be denied information and access to family planning services, whether natural or artificial. However, the last *proviso* of Section 7 restricts the access of minors to modern methods of family planning; it requires a written parental consent before a minor may be allowed access thereto. This is but recognition of the parental authority that is exercised by parents over the persons of their unemancipated children. That it is both a duty and a right of the parents to protect the physical health of their unemancipated children.

However, Section 7 provided an exception to the requirement of written parental consent for minors. A minor who is already a parent or has had a miscarriage may be allowed access to modern methods of family planning notwithstanding the absence of a written parental consent therefor. This runs afoul of the natural and primary right and duty of parents in the rearing of their children, which, under Section 12, Article II of the Constitution, should receive the support of the government.

There exists no substantial distinction as between a minor who is already a parent or has had a miscarriage and a minor who is not yet a parent or never had a miscarriage. There is no cogent reason to require a written parental consent for a minor who seeks access to modern family planning methods and dispense with such requirement if the minor is already a parent or has had a miscarriage. Under the Family Code, all minors, generally, regardless of his/her circumstances, are still covered by the parental authority exercised by their parents. That a minor is already a parent or has had a miscarriage does not operate to divest his/her parents of their parental authority; such circumstances do not emancipate a minor.

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder.[11] Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments.[12]

Considering that the last *proviso* of Section 7 operates to divest parents of their parental authority over the persons of their minor child who is already a parent or has had a miscarriage, the same must be struck down for being contrary to the natural and primary right and duty of parents under Section 12, Article II of the Constitution.

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11 *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

12 *Parham v. J.R.*, 442 U.S. 584, 604 (1977).

Section 14 does not violate the academic freedom of educational institutions nor infringe on the natural and primary right and duty of parents to rear their children.

Section 14[13] of R.A. No. 10354 mandates the provision of age- and development-appropriate reproductive health education, which would be taught to adolescents[14] in public schools by adequately trained teachers. The curriculum on age- and development-appropriate reproductive health education, which shall be formulated by the DepEd after consultation with parents-teachers-community associations, shall include subjects such as: values formation; knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behavior; gender and development; and responsible parenthood.

The petitioners claim that Section 14, by mandating the inclusion of age- and development-appropriate reproductive health education to adolescents, violates the academic freedom of educational institutions since they will be compelled to include in their curriculum a subject, which, based on their religious beliefs, should not be taught to students.[15]

The petitioners' claim is utterly baseless. Section 5(2), Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. The institutional academic freedom includes the right of the school or college to decide and adopt its aims and objectives, and to determine how these objections can best be attained, free from outside coercion or interference, save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term "academic freedom" encompass the freedom of the school or college to

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

[14] Section 4(b) of R.A. No. 10354 defines the term "adolescent" as referring to "young people between the ages of ten (10) to nineteen (19) years who are in transition from childhood to adulthood."

[15] Petition (G.R. No. 205478), *Echavez, M.D., et al. v. Ochoa, Jr., et al.*, pp. 13-14.

determine for itself: (1) who may teach; (2) what may be taught; (3) how lessons shall be taught; and (4) who may be admitted to study.[16]

An analysis of the foregoing claim requires a dichotomy between public and private educational institutions. The last sentence of Section 14 provides that the age- and development-appropriate reproductive health curriculum that would be formulated by the DepEd "shall be used by public schools and **may be adopted** by private schools." The mandated reproductive health education would only be compulsory for public schools. Thus, as regards private educational institutions, there being no compulsion, their constitutional right to academic freedom is not thereby violated.

As regards public educational institutions, though they are mandatorily required to adopt an age- and development-appropriate reproductive health education curriculum, the claimed curtailment of academic freedom is still untenable. Section 4(1), Article XIV of the Constitution provides that "[t]he State x x x shall exercise reasonable supervision and regulation of all educational institutions." The constitutional grant of academic freedom does not withdraw from the State the power to supervise and regulate educational institutions, whether public or private. The only requirement imposed by the Constitution on the State's supervision and regulation of educational institutions is that the exercise thereof must be reasonable.

Congress deemed it appropriate to include a provision on age- and development-appropriate reproductive health education as a means to address the rise of teenage pregnancies.[17] In a 2002 survey conducted by the University of the Philippines Population Institute, it was shown that 23% of young people aged 15 to 24 years old had already engaged in pre-marital sex; that pre-marital sex was prevalent among 31.1% of the boys and 15.4% among the girls.[18] The survey, after a consideration of other factors, concluded that many young people, despite having inadequate knowledge on reproductive health problems, engage in risky sexual behavior.[19] That, despite having liberal views on sex and related matters, they rarely seek medical help for reproductive health problems.[20] Poignantly, given this factual milieu, the provision on age- and development-appropriate reproductive health education under Section 14 is reasonable.

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16 *Mercado v. AMA Computer College-Paranaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 236; *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 455-456 (2000).

17 Senate Journal, Session No. 25, October 15, 2012, Fifteenth Congress, p. 565.

18 Sponsorship speech of Senator Miriam Defensor-Santiago on Senate Bill 2865, the senate version of R.A. No. 10354, citing *Young Adolescent Fertility Survey* 2002 by UP Population Institute; http://miriam.com.ph/newsblog/2011/08/17/the-reproductive-health-act-sponsorship-speech-parts-2-and-3/, last accessed on March 24, 2014.

19 Id.

20 Id.

The importance of integrating the subject of the dangers and dire consequences of alcohol abuse or even the menace of dangerous drugs in the curricula of primary and secondary educational institutions cannot be disputed. The prevalence of teenage pregnancy and the risks surrounding it is just as equally alarming as the dangers of alcohol and substance abuse. Accordingly, I find nothing objectionable in the integration of age- and development-appropriate reproductive health education in the curricula of primary and secondary schools.

The petitioners further assert that Section 14 violates the right to privacy of the parents as it amounts to a denigration of "the sanctity of the family home" and has "usurped the rights and duties of parents to rear and educate their children in accordance with their religious conviction by forcing some rules and State programs for reproductive health contrary to their religious beliefs." The petitioners claim that parents have the primary duty to educate their children, especially on matters affecting reproductive health. They thus allege that the State's interference in such a delicate parental task is unwarranted and should not be countenanced.

It is conceded that parents, as stated earlier, indeed have the natural and primary right and duty in the rearing of their children.[21] The Constitution further affirms such right and duty by mandating that the State, in providing compulsory elementary education for all children of school age, is proscribed from imposing a limitation on the natural rights of parents to rear their children.[22] At the core of the foregoing constitutional guarantees is the right to privacy of the parents in the rearing of their children.

Essentially, the question that has to be resolved is whether the inclusion of age- and development-appropriate reproductive health education in the curriculum of primary and secondary schools violates the right to privacy of the parents in the rearing of their children. The standard to be used in determining the validity of a government regulation, which is claimed to infringe the right to privacy of the people, was explained by the United States (US) Supreme Court in the land mark case of *Griswold v. Connecticut*[23] in this wise:

> The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, **that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be**

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21 CONSTITUTION, Article II, Section 12.

22 CONSTITUTION, Article XIV, Section 2(2).

23 381 U.S. 479 (1968).

> **achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.**[24] (Emphasis ours)

Thus, when a government regulation is claimed to infringe on the right to privacy, courts are required to weigh the State's objective against the privacy rights of the people. Although considered a fundamental right, the right to privacy may nevertheless succumb to a narrowly drawn government regulation, which advances a legitimate and overriding State interest.[25]

As explained earlier, Section 14 aims to address the increasing rate of teenage pregnancies in the country and the risks arising therefrom, which is undeniably a legitimate and overriding State interest. The question that has to be asked then is whether Section 14, in advancing such legitimate and overriding State interest, has employed means, which are narrowly tailored so as not to intrude into the right to privacy of the people.

Under Section 14, the formulation of the curriculum on age- and development-appropriate reproductive health education is a collaborative process. It provides "[t]hat flexibility in the formulation and adoption of appropriate course content, scope and methodology in each educational level or group shall be allowed **only after consultations with parents-teachers-community associations, school officials and other interest groups**." Section 14 thus takes into account the relevant concerns of parents and other interest groups in the adoption and implementation of the proposed age- and development-appropriate reproductive health education; any and all objections thereto based on religious beliefs would be considered during the formulation of the curriculum. In this sense, Section 14, in taking into account the relevant concerns of parents and other interest groups in the formulation of the curriculum, has been narrowly tailored so as not to invade the right to privacy of the parents.

Equally untenable is the petitioners' claim that the provision of age- and development-appropriate reproductive health education under Section 14 unduly burdens their freedom of religion.[26] A similar claim was resolved by the Supreme Court of Hawaii in *Medeiros v. Kiyosaki*.[27] In *Medeiros*, Hawaii's Department of Education, as part of its family life and sex education program, exhibits a film series entitled "Time of Your Life" to fifth and sixth grade students in public schools. The plaintiffs therein, parents and guardians of fifth and sixth grade students, sought to enjoin the exhibition of the said film series, claiming, *inter alia*, that the said program unduly interferes with their religious freedom.

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24 Id.

25 *See Gamboa v. Chan*, G.R. No. 193636, July 24, 2012, 677 SCRA 385, 399; *Ople v. Torres*, 354 Phil. 948 (1998); *Morfe v. Mutuc, et al.*, 130 Phil. 415 (1968).

26 Petition (G.R. No. 205478), *Echavez, M.D., et al. v. Ochoa, Jr., et al.*, p. 4.

27 478 P.2d 314 (1970).

The Supreme Court of Hawaii held that the Department of Education's family life and sex education program does not infringe on the religious freedom of the plaintiffs therein. Relying on the case of *Epperson v. Arkansas*,[28] the Supreme Court of Hawaii stressed that upholding the claim of the plaintiffs therein would amount to tailoring the teaching and learning in their schools to the principles or prohibitions of a religious sect, which is anathema to the non-establishment clause.

Epperson involves a challenge to the constitutionality of the "anti-evolution" statute adopted by the State of Arkansas in 1928, which makes it unlawful for a teacher in any State-supported school or university to teach the theory or doctrine that mankind ascended or descended from a lower order of animals, or to adopt or use in any such institution a textbook that teaches this theory. In declaring the statute unconstitutional, the US Supreme Court declared that:

> Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion, and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. **The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.**
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> **As early as 1872, this Court said: "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."** *Watson v. Jones,* 13 Wall. 679, 80 U.S. 728. This has been the interpretation of the great First Amendment which this Court has applied in the many and subtle problems which the ferment of our national life has presented for decision within the Amendment's broad command.
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> **There is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma.** In *Everson v. Board of Education,* this Court, in upholding a state law to provide free bus service to school children, including those attending parochial schools, said: "Neither [a] State nor the Federal Government can pass laws which aid one religion, aid all religions, or prefer one religion over another." 330 U.S. 1, 330 U.S. 15 (1947).[29] (Emphasis ours)

Declaring the provision of an age- and development-appropriate reproductive health education to primary and secondary students unconstitutional on the pretext that it conflicts with the religious convictions of others would amount to an endorsement of religion contrary to the non-

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28 393 U.S. 97 (1968).

29 Id.

establishment clause.[30] The petitioners' claimed infringement of their religious freedom is flawed in two ways: *first*, Section 14 takes into account the religious beliefs of parents by soliciting their participation in the formulation of the curriculum on age- and development-appropriate reproductive health education; and *second*, to permit the petitioners to control what others may study because the subject may be offensive to their religious or moral scruples would violate the non-establishment clause.[31]

The "duty to refer" under Sections 7 and 23(a)(3) does not restrict the freedom of religion.

The *ponencia* declared that the "duty to refer" imposed by Sections 7 and 23(a)(3) of R.A. No. 10354 is repugnant to the constitutional right to freedom of religion and, thus, should be struck down as unconstitutional. The *ponencia* explained that "[o]nce 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." The *ponencia* further described the said "duty to refer" as "a false compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive."

I do not agree.

In order to properly assess the constitutionality of Sections 7 and 23(a)(3), the provisions thereof must be considered in its entirety. Judicial scrutiny of the subject provisions cannot be delimited to a particular provision thereof, *i.e.,* the "duty to refer," lest the Court lose sight of the objectives sought to be achieved by Congress and the ramifications thereof with regard to the free exercise clause. The "duty to refer" must be construed with due regard to the other provisions in Sections 7 and 23(a)(3) and the objectives sought to be achieved by R.A. No. 10354 in its entirety.

The Constitution guarantees that no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof; that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.[32] Religious freedom forestalls compulsion by law of the acceptance of any creed or the practice

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30 *See Edwards v. Aguillard*, 482 U.S. 578 (1987).

31 *See* also *Smith v. Ricci*, 89 N.J. 514 (1982) where the Supreme Court of New Jersey upheld the State's "family life education program" in the public elementary and secondary curricula over objections that it infringes on the religious freedom of the parents.

32 CONSTITUTION, Article III, Section 5.

of any form of worship, and conversely, it safeguards the free exercise of the chosen form of religion.[33]

The twin clauses of free exercise clause and non-establishment clause express an underlying relational concept of separation between religion and secular government.[34] The idea advocated by the principle of separation of church and State is to delineate the boundaries between the two institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. While the State is prohibited from interfering in purely ecclesiastical affairs, the Church is likewise barred from meddling in purely secular matters.[35]

Freedom of religion embraces two aspects – freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be.[36] The free exercise clause does not unconditionally inhibit the State from requiring the performance of an act, or the omission thereof, on religious pretenses.[37] Religious freedom, like all other rights in the Constitution, can be enjoyed only with a proper regard for the rights of others.[38] It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare.[39]

Nonetheless, the State, in prescribing regulations with regard to health, morals, peace, education, good order or safety, and general welfare of the people, must give due deference to the free exercise clause; it must ensure that its regulation would not invidiously interfere with the religious freedom of the people. In such cases, the legitimate secular objectives of the State in promoting the general welfare of the people must be assessed against the religious scruples of the people.

In *Estrada v. Escritor*,[40] the Court held that the standard of benevolent neutrality "is the lens with which the Court ought to view religion clause cases[.]"[41] The Court explained the benevolent neutrality/ accommodation standard in this wise:

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33 *See* Corwin, The Constitution and What It Means Today, 14th ed., p. 97, citing *Cantwell v. Connecticut*, 310 U.S. 296 at 303 (1940).

34 Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 ed., p. 314.

35 *See Austria v. National Labor Relations Commission*, 371 Phil. 340, 353 (1999); Cruz, Constitutional Law, 2000 ed., pp. 178-179.

36 *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

37 *See Reynolds v. United States*, 98 U.S. 145 (1879); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Employment Division v. Smith*, 494 U.S. 872 (1990).

38 Cruz, Constitutional Law, 2000 ed., p. 187.

39 Id.

40 455 Phil. 411 (2003).

41 Id. at 576.

> With religion looked upon with benevolence and not hostility, ***benevolent neutrality*** **allows** ***accommodation*** **of religion under certain circumstances. Accommodations are government policies that take religion specifically into account** not to promote the government's favored form of religion, but **to *allow individuals and groups to exercise their religion without hindrance.*** Their purpose or effect therefore is to remove a burden on, or facilitate the exercise of a person's or institution's religion. As Justice Brennan explained, the "government [may] take religion into account . . . **to *exempt, when possible, from generally applicable governmental regulation* individuals whose religious beliefs and practices would otherwise thereby be infringed**, or to create without state involvement an atmosphere in which voluntary religious exercise may flourish." x x x Accomodation is forbearance and not alliance. It does not reflect *agreement* with the minority, but *respect* for the conflict between the temporal and spiritual authority in which the minority finds itself.[42] (Emphasis ours and citations omitted)

In ascertaining the limits of the exercise of religious freedom, in cases where government regulations collide with the free exercise clause, the Court further declared that, following the benevolent neutrality/accommodation standard, the "compelling state interest" test should be applied.[43] Under the "compelling state interest test," a State regulation, which is challenged as being contrary to the free exercise clause, would only be upheld upon showing that: (1) the regulation does not infringe on an individual's constitutional right of free exercise; or (2) any incidental burden on the free exercise of an individual's religion maybe justified by a compelling state interest in the regulation of a subject within the State's constitutional power to regulate by means, which imposed the least burden on religious practices.[44]

With the foregoing principles in mind, it is my view that Sections 7 and 23(a)(3) of R.A. No. 10354 does not run afoul of religious freedom. On the contrary, the said provisions explicitly recognize the religious freedom of conscientious objectors by granting accommodation to their religious scruples.

The right to health is a universally recognized human right.[45] In this regard, the Constitution mandates the State to "protect and promote the right to health of the people and instill health consciousness among them."[46] The

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42 Id. at 522-523.

43 Id. at 577-578.

44 *Braunfeld v. Brown*, 366 U.S. 599 (1961); *Sherbert v. Verner*, 374 U.S. 398 (1963).

45 Article 25 of the United Nations' Universal Declaration of Human Rights states that:
Article 25.
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

46 CONSTITUTION, Article II, Section 15.

Constitution further requires the State to "adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost;" that in the provision of health care service to the people, the needs of the underprivileged, sick, elderly, disabled, women, and children should be prioritized.[47]

Heeding the constitutional mandate to protect and promote the right to health of the people, Congress enacted R.A. No. 10354. Section 2 of R.A. No. 10354 thus pertinently states that:

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

Particularly, R.A. No. 10354 seeks to provide "effective and quality reproductive health care services and supplies,"[48] which would "ensure maternal and child health, the health of the unborn, safe delivery and birth of healthy children, and sound replacement rate, in line with the State's duty to promote the right to health, responsible parenthood, social justice and full human development."[49] R.A. No. 10354, as a corollary measure for the protection of the right to health of the people, likewise recognizes necessity to "promote and provide information and access, without bias, to all methods of family planning."[50] Primarily, the objective of R.A. No. 10354 is to provide marginalized sectors of society, particularly the women and the poor, access to reproductive health care services, and to health care in general, of which they have been deprived for many decades due to discrimination and lack of access to information.[51]

Sections 7 and 23(a)(3) effectuate the foregoing objectives that R.A. No. 10354 seeks to attain. Section 7, as stated earlier, facilitates the access by the public, especially the poor and marginalized couples having infertility issues desiring to have children, to modern family planning methods. It thus mandates all accredited public health facilities to provide a full range of modern family planning methods, which includes medical consultations,

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47 CONSTITUTION, Article XIII, Section 11.
48 R.A. No. 10354, Section 3(d).
49 R.A. No. 10354, Section 3(c).
50 R.A. No. 10354, Section 3(e).
51 Senate Journal, Session No. 18, September 13, 2011, Fifteenth Congress, p. 292.

supplies and procedures. Private health facilities are likewise required to extend family planning services to paying patients.

On the other hand, Section 23(a)(3) penalizes the refusal of any health care service provider to extend quality reproductive health care services and information on account of the patient's marital status, gender, age, religious convictions, personal circumstances, or nature of work. Thus:

> Section 23. *Prohibited Acts.* – The following acts are prohibited:
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> (a) Any health care service provider, whether public or private, who shall:
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> x x x x
>
> (3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: ***Provided,*** **That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible**: *Provided, further*, That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases;
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> x x x x (Emphasis ours)

Nevertheless, although Section 7 provides "that family planning services shall likewise be extended by private health facilities to paying patients," it nevertheless exempts "non-maternity specialty hospitals and **hospitals owned and operated by a religious group**" from providing full range of modern family planning methods. Instead, Section 7 imposes on non-maternity specialty hospitals and hospitals owned and operated by a religious group the duty to immediately refer patients seeking reproductive health care and services to another health facility that is conveniently accessible.

In the same manner, the prohibition imposed under Section 23(a)(3) is not absolute; it recognizes that a health care service provider may validly refuse to render reproductive health services and information if he/she conscientiously objects thereto "based on his/her ethical or religious beliefs." Nevertheless, Section 23(a)(3) likewise imposes a corresponding duty on such conscientious objector to immediately refer the person seeking

reproductive health services to another health care service provider within the same facility or one, which is conveniently accessible.

It cannot be denied that the State has a legitimate interest in the promotion and protection of the right to reproductive health of the people. The question that has to be resolved then is whether such interest can be considered compelling as to justify any incidental burden on the free exercise of religion.

The determination of whether there exists a compelling state interest that would justify an incidental burden involves balancing the interest of the State against religious liberty to determine which is more compelling under the particular set of facts. In assessing the state interest, the court will have to determine the importance of the secular interest and the extent to which that interest will be impaired by an exemption for the religious practice.[52] Accordingly, the supposed burden on the religious freedom of conscientious objectors in complying with the "duty to refer" would have to be weighed against the State's interest in promoting the right of the people to reproductive health.

According to the 2010 State of World Population prepared by the United Nations Population Fund, in the Philippines, 230 mothers die out of every 100,000 live births while 21 infants die out of every 1,000 live births.[53] Daily, there are about 15 women dying due to childbirth and pregnancy related complications.[54] About 11% of all deaths among women of reproductive age in the Philippines are due to maternal death.[55] Further, for every minute, 3 babies are born, and for every 1000 babies born, 33 die before reaching age five.[56] The foregoing statistics paints a harrowing tale of the state of the country's reproductive health. It is quite unfortunate that the country has a high rate of maternal and infant deaths, when it can be significantly reduced with proper and effective reproductive health care.

No less distressing is the state of unintended pregnancies, and its equally harrowing consequences, in the country. According to a study prepared by the Alan Guttmacher Institute (AGI), there were 1.9 million unintended pregnancies in the Philippines in 2008, resulting in two main outcomes—unplanned births and unsafe abortions. In the Philippines, 37% of all births are either not wanted at the time of pregnancy (mistimed) or entirely unwanted, and 54% of all pregnancies are unintended. The AGI

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52 *Estrada v. Escritor*, supra note 40 at 531.

53 Comment-in-Intervention, The Filipino Catholic Voices for Reproductive Health, Inc., pp. 36-37.

54 Id. at 37.

55 Sponsorship speech of Senator Miriam Defensor-Santiago on Senate Bill 2865, the senate version of R.A. No. 10354; http://miriam.com.ph/newsblog/2011/08/17/the-reproductive-health-act-sponsorship-speech-parts-2-and-3/, last accessed on March 24, 2014.

56 Sponsorship speech of Senator Pia S. Cayetano on Senate Bill 2865, the senate version of R.A. No. 10354; http://senatorpiacayetano.com/?p=412, last accessed on March 24, 2014.

further discovered that, on average, Filipino women give birth to more children than they want, which is particularly striking among the poorest Filipino women, who have nearly two children more than they intend to have.[57]

The AGI stressed that the foregoing statistics can be attributed to low contraceptive use and high levels of unmet need for contraception. The AGI pointed out that in 2008, more than 90% of unintended pregnancies occurred among women using traditional, ineffective methods or no method at all. The study further showed that poor women are less likely to use a contraceptive method than non-poor women (43% vs. 51%), and in regions where poverty is common, contraceptive use is substantially lower than the national average—*e.g.*, 38% in the Zamboanga Peninsula and 24% in the Autonomous Region in Muslim Mindanao.[58]

The present condition of the country's reproductive health care, taken together with the Constitution's mandate to promote and protect the right to health of the people, constitutes a compelling state interest as would justify an incidental burden on the religious freedom of conscientious objectors. Sections 7 and 23(a)(3) of R.A. No. 10354 were crafted to ensure that the government's effort in disseminating information and providing access to services and programs on reproductive health would not be stymied. The said provisions seek to improve the condition of the reproductive health care in the country.

Nevertheless, Congress recognized that, in enacting regulations to further the reproductive health of the people, including access to modern family planning methods, resistance thereto based on religious scruples would abound. Notwithstanding the presence of a compelling state interest in the promotion and protection of reproductive health, Congress deemed it proper to carve out exemptions that specifically take into account the religious dissensions of conscientious objectors, which effectively exempts them from the requirements imposed under Sections 7 and 23(a)(3). In this regard, it cannot thus be claimed that the said provisions invidiously interfere with the free exercise of religion.

Nevertheless, it cannot be denied that the government's effort to provide increased access to information, programs, and services regarding reproductive health would be seriously hampered by the exemption accorded to conscientious objectors. A considerable number of health facilities in the country are owned and operated by religious institutions. Likewise, being a predominantly Catholic country, there are a considerable number of health

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[57] Unintended Pregnancy and Unsafe Abortion in the Philippines: Context and Consequences; http://www.guttmacher.org/pubs/IB-unintended-pregnancy-philippines.html, last accessed on March 24, 2014.

[58] Id.

service providers who, due to their religious convictions, view modern methods of family planning, a major component of reproductive health under R.A. No. 10354, as immoral.

In view of the accommodation granted to conscientious objectors under Sections 7 and 23(a)(3), a great portion of the public would still be denied access to information, programs, and services regarding reproductive health, thus, effectively defeating the lofty objectives of R.A. No. 10354. Thus, Congress, still recognizing the religious freedom of conscientious objectors, instead imposed on them the "duty to refer" the patients seeking reproductive health care and service to another health facility or reproductive health care service provider. Under the circumstances, the "duty to refer" imposes the least possible interference to the religious liberties of conscientious objectors.

Thus, the "duty to refer" imposed by Sections 7 and 23(a)(3) does not invidiously interfere with the religious freedom of conscientious objectors; any discomfort that it would cause the conscientious objectors is but an incidental burden brought about by the operation of a facially neutral and secular regulation. Not all infringements of religious beliefs are constitutionally impermissible. Just as the religious freedom of conscientious objectors must be respected, the higher interest of the State should likewise be afforded utmost protection.

Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved an individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs,[59] particularly in this case where the provisions in question have already given accommodation to religious dissensions. Values that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process.[60]

Further, the health care industry is one that is imbued with public interest. Their religious scruples aside, health facilities and health care service providers owe it to the public to give them choice on matters affecting reproductive health. Conscientious objectors cannot be permitted to impose their religious beliefs on others by denying them the choice to do so as it would amount to according a preferred status to their rights over the rights of others.

The duty to provide information regarding programs and services on reproductive health under Section

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59 *Employment Division v. Smith,* supra note 37.

60 Id.

23(a)(1) does not run afoul of religious freedom.

Section 23(a)(1)[61] punishes any health care service provider who either: (1) knowingly withhold information regarding programs and services on reproductive health; (2) knowingly restrict the dissemination of information regarding programs and services on reproductive health; and/or (3) intentionally provide incorrect information regarding programs and services on reproductive health.

The *ponencia* struck down Section 23(a)(1) as being unconstitutional as it supposedly impinges on the religious freedom of health care service providers. That in the dissemination of information regarding programs and services on reproductive health, the religious freedom of health care service providers should be respected.

I do not agree.

Contrary to the insinuation of the *ponencia*, Section 23(a)(1) does not compel health care service providers to violate their religious beliefs and convictions. Section 23(a)(1) does not absolutely prohibit a health care service provider from withholding information regarding programs and services on reproductive health.

A rule of statutory construction is that a statute must be construed as a whole. The meaning of the law is not to be extracted from a single part, portion or section or from isolated words and phrases, clauses or sentences, but from a general consideration or view of the act as a whole. Every part of the statute must be interpreted with reference to the context.[62] In line with this rule, Section 23(a)(1) should be read in conjunction with Section 23(a)(3), which provides that "the conscientious objection of a health care service provider based on his/her ethical or religious belief shall be respected."

Accordingly, a health care service provider who conscientiously objects, based on his/her ethical or religious beliefs, to programs and services regarding reproductive health is exempted from the effects of Section 23(a)(1) **only insofar as it punishes a health care service provider**

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

62 *Aquino v. Quezon City*, 529 Phil. 486, 498 (2006).

who knowingly withholds information on said programs and services. Section 23(a)(1), in relation to Section 23(a)(3), recognizes that a conscientious objector cannot be compelled to provide information on reproductive health if the same would go against his/her religious convictions. In such cases, however, the conscientious objector, pursuant to Section 23(a)(3), has the correlative duty to immediately refer the person seeking information on programs and services on reproductive health to another health care service provider within the same facility or one which is conveniently accessible.

However, a health care service provider who knowingly restricts the dissemination of information or intentionally provides incorrect information on programs and services regarding reproductive health, though the said acts are based on his/her conscientious objections, would still be liable under Section 23(a)(1).

Section 23(a)(1) recognizes the primacy of the right of an individual to be informed and, accordingly, exercise his/her right to choose and make decisions on matters affecting his/her reproductive health. The provision aims to assure that every Filipino will have access to unbiased and correct information on the available choices he/she have with regard to reproductive health.[63]

It is conceded that the rights of those who oppose modern family planning methods, based on ethical or religious beliefs, should be respected. This is the reason why Section 23(a)(1), in relation to Section 23(a)(3), exempts a conscientious objector from the duty of disclosing information on programs and services regarding reproductive health.

However, such accommodation does not give license to the conscientious objectors to maliciously provide wrong information or intentionally restrict the dissemination thereof to those who seek access to information or services on reproductive health. Just as their rights must be respected, conscientious objectors must likewise respect the right of other individuals to be informed and make decisions on matter affecting their reproductive health. The freedom to act on one's belief, as a necessary segment of religious freedom, like all other rights, comes with a correlative duty of a responsible exercise of that right. The recognition of a right is not free license for the one claiming it to run roughshod over the rights of others.[64]

Further, it cannot be gainsaid that the health care industry is one, which is imbued with paramount public interest. The State, thus, have the

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63 Senate Journal, Session No. 27, October 5, 2011, Fifteenth Congress, p. 433.

64 *Tulfo v. People*, G.R. No. 161032, September 16, 2008, 565 SCRA 283, 305.

right and duty to ensure that health care service providers would not knowingly restrict the dissemination of information or intentionally provide incorrect information on programs and services regarding reproductive health on the pretense of their religious scruples.

Section 23(b) and Section 5.24 of the IRR are not anathema to the equal protection clause.

Section 23(b)[65] penalizes any public officer specifically charged with the implementation of the provisions of R.A. No. 10354 who either: (1) restricts or prohibits the delivery of reproductive health care services; (2) forces, coerces or induces any person to use reproductive health care services; (3) refuses to allocate, approve or release any budget for reproductive health care services; (4) refuses to support reproductive health programs; or (5) does any act that hinders the full implementation of a reproductive health program.

On the other hand, the last paragraph of Section 5.24 of the IRR, provides that "[public] skilled health professionals such as provincial, city, or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of [R.A. No. 10354 and its IRR] cannot be considered as conscientious objectors."

The *ponencia* declared Section 23(b) and the last paragraph of Section 5.24 of the IRR as unconstitutional for being violative of the equal protection clause. The *ponencia* held that the "conscientious objection clause" under Section 23(a)(3) "should equally be protective of the religious belief of public health officers;" that the "protection accorded to other conscientious objectors should equally apply to all medical practitioners without distinction whether he belongs to the public or private sector."

I do not agree.

Equal protection simply provides that all persons or things similarly situated should be treated in a similar manner, both as to rights conferred

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[65] Section 23. *Prohibited Acts.* – The following acts are prohibited:

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(b) Any public officer, elected or appointed, specifically charged with the duty to implement the provisions hereof, who, personally or through a subordinate, prohibits or restricts the delivery of legal and medically-safe reproductive health care services, including family planning; or forces, coerces or induces any person to use such services; or refuses to allocate, approve or release any budget for reproductive health care services, or to support reproductive health programs; or shall do any act that hinders the full implementation of a reproductive health program as mandated by this Act;

x x x x

and responsibilities imposed. The purpose of the equal protection clause is to secure every person within a State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities.[66]

Persons or things ostensibly similarly situated may, nonetheless, be treated differently if there is a basis for valid classification.[67] The legislature is allowed to classify the subjects of legislation; if the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause.[68] Classification, to be valid, must (1) rest on substantial distinctions, (2) be germane to the purpose of the law, (3) not be limited to existing conditions only, and (4) apply equally to all members of the same class.[69]

Contrary to the *ponencia's* ratiocination, I find that a valid classification exists as would justify the withholding of the religious accommodation extended to health care service providers under Section 23(a)(3) from public officers who are specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR.

There is a substantial distinction as regards a conscientious objector under Section 23(a)(3), who may be a public or private health care service provider, and a public officer specifically charged with the duty to implement the provisions of R.A. No. 10354 and its IRR. The Constitution provides that a public office is a public trust.[70] An important characteristic of a public office is that its creation and conferment involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; that some portion of the sovereignty of the country, either legislative, executive, or judicial, attaches, for the time being, to be exercised for the public benefit.[71]

That a public officer is specifically delegated with the a sovereign function of the government, *i.e.* the implementation of the provisions of RA 10354 and its IRR, is what sets him apart from a health care service provider under Section 23(a)(3). It should be clarified, however, that the religious accommodation extended to conscientious objectors under Section 23(a)(3) covers public health care service providers, who are likewise considered

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66 *Bureau of Customs Employees Association (BOCEA) v. Teves*, G.R. No. 181704, December 6, 2011, 661 SCRA 589, 609.

67 Nachura, Outline Reviewer in Political Law, 2006 ed., p. 95.

68 *Epperson v. Arkansas*, supra note 28, at 126.

69 *Tiu v. Court of Appeals*, 361 Phil. 229, 242 (1999).

70 CONSTITUTION, Article XI, Section 1.

71 *See* Cruz, The Law on Public Officers, 2007 ed., p. 3.

public officers.[72] However, unlike the public officers under Section 23(b) and Section 5.24 of the IRR, public health care service providers under Section 23(a)(3) are not specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR.

Further, classifying a public officer charged with the implementation of the provisions of R.A. No. 10354 and its IRR apart from health care service providers under Section 23(a)(3) is not only germane, but also necessary to the purpose of the law. To reiterate, the primary objective of R.A. No. 10354 is to provide an increased access to information, programs, and services regarding reproductive health. Allowing the same religious accommodation extended under Section 23(a)(3) to public officers charged with the implementation of the law would seriously hamper the delivery of the various programs and services regarding reproductive health under R.A. No. 10354. In this regard, a public officer specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR is considered an agent of the State; he cannot thus be allowed to effectively frustrate the legitimate interest of the State in enacting R.A. No. 10354 by refusing to discharge the sovereign functions delegated to him to the detriment of the public.

Moreover, the duration of the said classification is not limited to existing conditions. Also, the prohibition imposed under Section 23(b) and Section 5.24 of the IRR applies equally to all public officers specifically charged with the implementation of the law. Accordingly, the equal protection claim against Sections 23(b) and 5.24 of the IRR must evidently fail.

I agree though with the *ponencia's* declaration that "the freedom to believe is intrinsic in every individual and the protective robe that guarantees its free exercise is not taken off even if one acquires employment in the government." Indeed, it is undeniable that a man does not shed his

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[72] Section 5.24 of the IRR recognizes that public officers, *i.e.*, public skilled health professionals may be conscientious objectors, albeit after complying with certain requisites, *viz*:

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

a) The skilled health professional shall explain to the client the limited range of services he/she can provide;

b) Extraordinary diligence shall be exerted to refer the client seeking care to another skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service within the same facility;

c) If within the same health facility, there is no other skilled health professional or volunteer willing and capable of delivering the desired reproductive health care service, the conscientious objector shall refer the client to another specific health facility or provider that is conveniently accessible in consideration of the client's travel arrangements and financial capacity;

d) Written documentation of compliance with the preceding requirements; and

e) Other requirements as determined by the DOH.

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

spirituality once he assumes public office. However, it cannot equally be denied that the State, in the pursuit of its legitimate secular objectives, should not be unnecessarily impeded by the religious scruples of its agents. Pursuant to the principle of separation of Church and State, it is not only the State that is prohibited from in purely ecclesiastical affairs; the Church is likewise barred from meddling in purely secular matters.[73]

Thus, in *People v. Veneracion*,[74] the Court, in resolving the question of whether a judge, after a finding that the accused had committed a crime punishable by the penalty of death, when the death penalty law was still in effect, has the discretion to impose the penalty of *reclusion perpetua* on account of his religious beliefs, stated that:

> We are aware of the trial judge's misgivings in imposing the death sentence because of his religious convictions. While this Court sympathizes with his predicament, it is its bounden duty to emphasize that a court of law is no place for a protracted debate on the morality or propriety of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances. The discomfort faced by those forced by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice. Courts are not concerned with the wisdom, efficacy or morality of laws. x x x.[75]

Reason demands that public officers who are specifically charged with the implementation of the provisions of R.A. No. 10354 and its IRR be classified differently from public and private health care service providers under Section 23(a)(3); they cannot be allowed to avail of the religious accommodation granted to conscientious objectors lest the lofty objectives of the law be disparaged. Any discomfort that would be caused to such public officers is but a mere incidental burden in the exercise of their religious belief, which is justified by the compelling state interest in the enactment of R.A. No. 10354.

Section 23(a)(2) punishes the refusal to perform reproductive health procedures due to lack of spousal consent and/or parental consent; it is not inimical to freedom of religion.

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73 Cruz, Constitutional Law, 2000 ed., p. 179.

74 319 Phil. 364 (1995).

75 Id. at 373.

Section 23(a)(2)[76] penalizes any health care service provider who refuses to perform legal and medically-safe reproductive health procedures on the ground of lack of consent or authorization of either: (1) the spouse, in the case of married persons; or (2) the parents or person exercising parental authority, in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused, or convicted perpetrator.

The *ponencia* struck down Section 23(a)(2) for being unconstitutional, pointing out that, "in the performance of reproductive health procedures, the religious freedom of health care service providers should be respected." The *ponencia's* conclusion stems from a misapprehension of the acts penalized under Section 23(a)(2); it does not, in any manner, invidiously interfere with the religious rights of health care service providers.

Section 23(a)(2) does not penalize the refusal of a health care service provider to perform reproductive health procedures *per se*. What is being penalized by the provision is the refusal of a health care service provider to perform such procedures **on the ground of lack of spousal consent or parental consent** in certain cases. Indeed, for reasons to be explained at length later, a health care service provider cannot avoid the performance of reproductive health procedure, in case of married persons, **solely** on the ground of lack of spousal consent since there would be no justifiable reason for such refusal.

Likewise, it is quite absurd to expect that the parent of or one exercising parental authority over an abused minor would give consent for the latter's reproductive health procedure if he/she is the one responsible for the abuse. Thus, Section 23(a)(2) dispenses with the requirement of parental authority from the abusive parent or person exercising parental authority. In such case, a health care service provider cannot refuse the performance of

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[76] SEC. 23. *Prohibited Acts.* – The following acts are prohibited:
(a) Any health care service provider, whether public or private, who shall:
x x x x
(2) Refuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization of the following persons in the following instances:
(i) Spousal consent in case of married persons: *Provided*, That in case of disagreement, the decision of the one undergoing the procedure shall prevail; and
(ii) Parental consent or that of the person exercising parental authority in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court. In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures and in no case shall consent be required in emergency or serious cases as defined in Republic Act No. 8344; and
x x x x

reproductive health procedure on the abused minor **solely** on the ground of lack of parental consent.

Nevertheless, even in cases where the individual seeking reproductive health procedure is married or is an abused minor, a health care service provider **may validly refuse to perform such procedure if the objection thereto is based on his/her ethical or religious beliefs**. Section 23(a)(2) must be read in conjunction with Section 23(a)(3), which provides for religious accommodation of conscientious objectors. However, in such cases, the health care service provider would still have the duty to immediately refer the married individual or the abused minor to another health care service provider within the same facility or one, which is conveniently accessible.

Section 23(a)(2)(i) merely upholds the primacy of an individual's choice on matters affecting his/her health; it does not intrude into the right to marital privacy.

Essentially, Section 23(a)(2)(i)[77] provides that a married individual may undergo a reproductive health procedure *sans* the consent/authorization of his/her spouse; that any health care service provider who would obstinately refuse to perform such procedure on a married individual on the pretext of the lack of spousal consent would be penalized accordingly.

The *ponencia* declared Section 23(a)(2)(i) as being contrary to Section 3, Article XV of the Constitution, which requires the State to defend the "right of the spouses to found a family," thus unduly infringing on the right to marital privacy. The *ponencia* explained that the said provision "refers to reproductive health procedures like tubal ligation and vasectomy which, by their very nature, require mutual consent and decision between the husband and wife as they affect issues intimately related to the founding of the family." The *ponencia* pointed out that decision-making concerning reproductive health procedure "falls within the protected zone of marital privacy" from which State intrusion is proscribed. Thus, the *ponencia* concluded, dispensing with the spousal consent is "disruptive of family unity" and "a marked departure from the policy of the State to protect marriage as an inviolable social institution."

It is conceded that intimate relations between husband and wife fall within the right of privacy formed by emanations of the various guarantees in the Bill of Rights, to which State intrusion is proscribed.[78] However, I do

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77 Id.

78 *See Griswold v. Connecticut*, supra note 23.

not agree that upholding a married individual's choice to submit to reproductive health procedure despite the absence of the consent or authorization of his/her spouse would be disruptive of the family.

The *ponencia* harps on the right to privacy that inheres in marital relationships. Yet the marital couple is not an independent entity, with a mind and heart of its own, but an association of two individuals, each with a separate intellectual and emotional makeup.[79] While the law affirms that the right of privacy inheres in marital relationships, it likewise recognizes that **a spouse, as an individual *per se*, equally has personal autonomy and privacy rights** apart from the right to marital privacy guaranteed by the Constitution. A spouse's personal autonomy and privacy rights, as an individual *per se*, among others, necessitates that his/her decision on matters affecting his/her health, including reproductive health, be respected and given preference.

At the heart of Section 23(a)(2)(i) is the fundamental liberty of an individual to personal autonomy, *i.e.,* to decide on matters affecting his/her reproductive health. Section 23(a)(2)(i), contrary to the *ponencia's* insinuation, does not hinder a married individual from conferring with his/her spouse on his/her intended reproductive health procedure. There is nothing in the said provision, which prevents a husband/wife from obtaining the consent/authorization for an intended reproductive health procedure. Nevertheless, the objection of the other spouse thereto, as common sense would suggest, should not prevent a married individual from proceeding with the reproductive health procedure since it is his/her bodily integrity that is at stake.

In this regard, the ruling of the US Supreme Court *Planned Parenthood v. Danforth*[80] is instructive. *Danforth* involves a Missouri abortion statute, which, *inter alia*, required the written consent of the husband before a woman may be allowed to submit to an abortion[81] during the first 12 weeks of pregnancy. The US Supreme Court declared the spousal consent requirement unconstitutional for unduly intruding into the right to privacy of the woman. Thus:

> We now hold that the State may not constitutionally require the consent of the spouse, as is specified under § 3(3) of the Missouri Act, as a condition for abortion during the first 12 weeks of pregnancy. We thus agree with the dissenting judge in the present case, and with the courts whose decisions are cited above, that **the State cannot delegate to a spouse a**

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79 *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

80 428 U.S. 52 (1976); *see* also *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

81 In the US, Abortion, pursuant to *Roe v. Wade*, (410 U.S. 113 [1973]) is a recognized right of the woman before a fetus is viable outside the womb, which is generally during the first trimester of the pregnancy.

> **veto power which the state itself is absolutely and totally prohibited from exercising** during the first trimester of pregnancy.
>
> x x x Clearly, since the State cannot regulate or proscribe abortion during the first stage, when the physician and his patient make that decision, the State cannot delegate authority to any particular person, even the spouse, to prevent abortion during that same period.
>
> We are not unaware of the deep and proper concern and interest that a devoted and protective husband has in his wife's pregnancy and in the growth and development of the fetus she is carrying. Neither has this Court failed to appreciate the importance of the marital relationship in our society. x x x Moreover, we recognize that the decision whether to undergo or to forgo an abortion may have profound effects on the future of any marriage, effects that are both physical and mental, and possibly deleterious. **Notwithstanding these factors, we cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy when the State itself lacks that right.** x x x.
>
> **It seems manifest that, ideally, the decision to terminate a pregnancy should be one concurred in by both the wife and her husband. No marriage may be viewed as harmonious or successful if the marriage partners are fundamentally divided on so important and vital an issue. But it is difficult to believe that the goal of fostering mutuality and trust in a marriage, and of strengthening the marital relationship and the marriage institution, will be achieved by giving the husband a veto power exercisable for any reason whatsoever or for no reason at all.** Even if the State had the ability to delegate to the husband a power it itself could not exercise, it is not at all likely that such action would further, as the District Court majority phrased it, the "interest of the state in protecting the mutuality of decisions vital to the marriage relationship."
>
> x x x x
>
> We recognize, of course, that, when a woman, with the approval of her physician but without the approval of her husband, decides to terminate her pregnancy, it could be said that she is acting unilaterally. **The obvious fact is tbat, when the wife and the husband disagree on this decision, the view of only one of the two marriage partners can prevail. Inasmuch as it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor.** x x x. (Emphases ours)[82]

It is indeed ideal that the decision whether to submit to reproductive health procedure be a joint undertaking of the spouses, especially on such a vital and sensitive matter. It is inevitable, however, for cases to abound wherein a husband/wife would object to the intended procedure of his/her spouse. In such cases, the right to reproductive health of a spouse would be rendered effectively inutile. I do not see how fostering such stalemate, which

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82 Id.

can hardly be considered as a harmonious and blissful marital relationship, could "protect the marriage as an inviolable social institution."

Thus, the law, in case of disagreement, recognizes that the decision of the spouse undergoing the reproductive health procedure should prevail. In so declaring, Section 23(a)(2)(i) does not invidiously interfere with the privacy rights of the spouses. In dispensing with the spousal consent/authorization in case of disagreement, the law is not declaring a substantive right for the first time; even in the absence of such declaration, the decision of the spouse undergoing the reproductive health procedure would still prevail. Section 23(a)(2)(i) is but a mere recognition and affirmation of a married individual's constitutionally guaranteed personal autonomy and his/her right to reproductive health.

Requiring the rendition of *pro bono* reproductive health services to indigent women for PhilHealth accreditation does not infringe on religious freedom.

Section 17 encourages private and non-government reproductive health care service providers "to provide at least forty-eight (48) hours annually of reproductive health services, ranging from providing information and education to rendering medical services, free of charge to indigent and low-income patients." It further mandated that the *pro bono* reproductive health services shall be included as a prerequisite in the accreditation under the PhilHealth.

The *ponencia* declared that Section 17, contrary to the petitioners' stance, does not amount to involuntary servitude; that it merely encourages reproductive health care service providers to render *pro bono* services. The *ponencia* likewise held that requiring the rendition of said *pro bono* services for PhilHealth accreditation is not an unreasonable burden, but a necessary incentive imposed by Congress in the furtherance of a legitimate State interest. Nevertheless, the *ponencia* declared Section 17 unconstitutional insofar as it affects conscientious objectors in securing PhilHealth accreditation; that conscientious objectors are exempt from rendition of reproductive health services, *pro bono* or otherwise.

While I agree with the *ponencia* that Section 17 does not amount to involuntary servitude and that requiring the rendition of *pro bono* reproductive health services for PhilHealth accreditation is not an unreasonable burden to health care service providers, I disagree that Section 17 is unconstitutional as applied to conscientious objectors.

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As pointed out earlier, it is conceded that health care service providers may not be compelled to provide certain information or service regarding reproductive health if it would be anathema to his/her religious convictions. Specifically, under Section 17, a health care service provider may not be denied the opportunity to be accredited under R.A. No. 7875, otherwise known as the National Health Insurance Act of 1995, as amended by R.A. No. 10606, for his/her refusal to render *pro bono* reproductive health services **that are contrary to his/her religious beliefs**.

However, that a health care service provider has religious objections to **certain reproductive health care services** does not mean that he/she is already exempted from the requirement under Section 17 for PhilHealth accreditation. The requirement under Section 17 is stated in general terms and is religion-neutral; it merely states that health care service providers, as a condition for PhilHealth accreditation, must render *pro bono* reproductive health service. The phrase "reproductive health care service" is quite expansive and is not limited only to those services, which may be deemed objectionable based on religious beliefs.

Reproductive health care includes: (1) family planning information and services; (2) maternal, infant and child health and nutrition, including breastfeeding; (3) proscription of abortion and management of abortion complications; (4) adolescent and youth reproductive health guidance and counseling; (5) prevention, treatment, and management of reproductive tract infections, HIV and AIDS, and other sexually transmittable infections; (6) elimination of violence against women and children, and other forms of sexual and gender-based violence; (7) education and counseling on sexuality and reproductive health; (8) treatment of breast and reproductive tract cancers, and other gynecological conditions and disorders; (9) male responsibility and involvement, and men's reproductive health; (10) prevention, treatment, and management of infertility and sexual dysfunction; (11) reproductive health education for adolescents; and (12) mental health aspect of reproductive health care.[83]

Thus, a health care service provider, his/her religious objections to certain reproductive health care services aside, may still render *pro bono* reproductive health care service, as a prerequisite for PhilHealth accreditation, by providing information or medical services, for instance, on treatment of breast and reproductive tract cancers, and other gynecological conditions and disorders or on maternal, infant and child health and nutrition.

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[83] R.A. No. 10354, Section 4(q).

ACCORDINGLY, I vote to **DECLARE UNCONSTITUTIONAL only** Section 7 of Republic Act No. 10354, insofar as it dispenses with the requirement of parental consent for minors who are already parents or have had a miscarriage, for being contrary to Section 12, Article II of the Constitution.

BIENVENIDO L. REYES
Associate Justice