Government Medical Practitioners as Conscientious Objectors: An Examination of the Compelling State Interest and Religious Freedom in *Imbong v. Ochoa Jr.*

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I. INTRODUCTION

When health services were devolved to the local government units after the Local Government Code[1] took effect in 1991, it became apparent that the

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1. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160 (1991).

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availability of modern contraceptives, especially for women, would be a problem for areas where the head of the local units expressed preference for natural family planning.[2] Over the years, it became more crucial to have a national reproductive health law that provides for the legal framework for the reproductive health services, medicines, and facilities that should be available in the national level. The road leading to the enactment of Republic Act No. 10354, otherwise known as the "The Responsible Parenthood and Reproductive Health Act of 2012" (RH Law),[3] however, has been highly divisive. Its implementation, even at present, continues to be contentious.[4] A glaring example is the case of Sorsogon City Mayor Sally A. Lee who, despite the RH Law, enacted Executive Order No. 3[5] "declar[ing] Sorsogon City as a Pro-Life City."[6]

It is important to emphasize that health as a human right is not as developed a concept in the country as compared to the civil and political

2. *See* U.N. Committee on the Elimination of Discrimination against Women, *Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, at 1, CEDAW/C/OP.8/PHL/1 (Apr. 22, 2015). The summary inquires into the alleged systematic and grave violations of rights guaranteed under the Convention on the Elimination of Discrimination against Women (CEDAW) resulting from the implementation of Executive Order No. 003, issued by the former Mayor of Manila, Jose L. Atienza, Jr. on 29 February 2000, which governed the provision of sexual and reproductive health rights, services, and commodities in Manila. *Id. See also* Domini M. Torrevillas, *Another anti-RH ordinance*, PHIL. STAR, Sep. 15, 2011, *available at* http://www.philstar.com/opinion/726997/another-anti-rh-ordinance (last accessed May 12, 2017) & Trade Union of the Philippines, Ayala Alabang ban on condoms faces judicial challenge, *available at* http://tucp.org.ph/2011/02/ayala-alabang-ban-on-condoms-faces-judicial-challenge (last accessed May 12, 2017) (citing Christine F. Herrera, *Ayala Alabang ban on condoms faces judicial challenge*, MANILA STAND. TODAY, Mar. 2, 2011 at A1-A2.).

3. An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health [The Responsible Parenthood and Reproductive Health Act of 2012], Republic Act No. 10354 (2012).

4. *See* The Partnership for Maternal, Newborn & Child Health, The Philippines passes Reproductive Health Law, *available at* http://www.who.int/pmnch/media/news/2013/20130107_philippines_reproductive_health_law/en (last accessed May 12, 2017).

5. Office of the City Mayor, City of Sorsogon, An Executive Order Declaring Sorsogon City a Pro-Life City, Executive Order No. 3, Series of 2015 (Feb. 2, 2015).

6. *Id.* para. 7.

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rights found in the Bill of Rights of the Philippine Constitution.[7] The latter have been informed and enriched by jurisprudence over a considerable period of time. Further, even if one were to assume that the discourse on health as a human right is already well-entrenched in the legal and policy frameworks of the Philippines, reproductive and sexual health, specifically relating to access to modern contraception, does not enjoy priority as a health need, much less a health right. In fact, it does not enjoy any priority at all.

The enactment of The Magna Carta of Women (MCW)[8] into law gave hope that reproductive health would soon follow in the legislative agenda of Congress and the Executive department. However, even the passage of both the MCW and the RH Law has not translated into the full and free realization of the right to reproductive and sexual health in the Philippines.

This Article discusses the legal hurdles of the RH Law in the case of *Imbong v. Ochoa, Jr.*[9] It specifically focuses on facilitated referrals for conscientious objectors, which the Supreme Court struck down for being unconstitutional on the basis of religious freedom under the Constitution.[10] It will examine the compelling state interest test, which was the standard used by the Court, and the factors it considered in its application.[11] It will then critique the Court's appreciation of this test in light of the competing rights, interests, and responsibilities between patients and health care providers, especially as regards objectors coming from the government. Finally, the Article will conclude with an evaluation of whether the compelling state interest test was properly applied by the Court, given the Philippine cultural and religious contexts and the continuing struggle for the recognition and promotion of women's reproductive rights.

On 14 August 2009, the MCW substantially incorporated the provisions of the Convention on the Elimination of All Forms of Discrimination against

7. Section 15 of Article III of the 1987 Philippine Constitution guarantees the right to health — "The State shall protect and promote the right to health of the people and instill health consciousness among them." PHIL. CONST. art. III, § 15.

8. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2009).

9. Imbong v. Ochoa Jr., 721 SCRA 146 (2014).

10. *Id.* at 336.

11. *Id.* at 335-36.

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Women (CEDAW),[12] which entered into force in the Philippines on 3 September 1981.[13]

The MCW lays down a general framework for the protection and promotion of women's rights, beginning with a Declaration of Policy, Principles of Human Rights of Women, and Definition of Terms;[14] followed by the duties relating to the recognition, respect, and promotion of the human rights of women by the State, private sector, society, and all individuals;[15] Women's Rights and Empowerment;[16] the Rights and Empowerment of Marginalized Sectors, including women in especially difficult circumstances;[17] and finally, the Institutional Mechanisms for the law's implementation.[18]

In Section 3 of the MCW, where the principles of human rights of women are articulated, the law affirms that "[n]o one [ ] should suffer discrimination on the basis of ethnicity, gender, age, language, sexual orientation, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards."[19] This Section also confirms that human rights are universal, inalienable, indivisible, interrelated, interdependent, and cross-cutting — as they relate to civil, cultural, economic, political, or social issues.[20] The Section further mentions with particularity the use of a rights-based approach in relation to the participatory rights of women.[21]

> SECTION 3. Principles of Human Rights of Women. [—]
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> ...
>
> All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities,

12. Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sep. 3, 1981).
13. *Id.* at 13.
14. The Magna Carta of Women, §§ 2-4.
15. *Id.* §§ 5-6.
16. *Id.* §§ 8-19.
17. *Id.* §§ 20-35.
18. *Id.* §§ 36-42.
19. *Id.* § 3, para. 4.
20. The Magna Carta of Women, § 3, paras. 1-3.
21. *Id.* § 3, para. 5.

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> civil society, minorities, women, young people, indigenous peoples, and other identified groups.
>
> States and other duty-bearers are answerable for the observance of human rights. They have to comply with the legal norms and standards enshrined in international human rights instruments in accordance with the Philippine Constitution. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.[22]

Relating this to women's right to health, Section 17 (a) and (b) of the MCW guarantee the provision of comprehensive health services and comprehensive health information and education to women, respectively.[23] One of the health services identified in the Section is access to "[r]esponsible, ethical, legal, safe, and effective methods of family planning[.]"[24] The law also specifically states that said services shall be culture-sensitive and gender-responsive.[25] A further qualification to these services is that "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."[26] The comprehensive health information and education to be provided to women by the government through education and training programs shall be "appropriate, timely, complete, and accurate."[27]

This is further qualified by 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
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> (3) Ethical, legal, safe, and effective family planning methods[,] including fertility awareness.[28]

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22. *Id.* § 3, paras. 5-6.
23. *Id.* § 17 (a) & (b).
24. *Id.* § 17 (a) (3).
25. *Id.* § 17 (a), para. 1.
26. The Magna Carta of Women, § 17 (a), para. 1.
27. *Id.* § 17 (b), para. 1.
28. *Id.* § 17 (b), paras. 1-3.

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The MCW is largely framed as general declarations which aim to empower women and recognize their rights. While it does not actually express specific duties and obligations that women can immediately demand from the government, especially if it would entail the use of resources, the law categorically emphasizes that a rights-based approach shall be the standard in promoting the rights enumerated therein.[29] This means that women are recognized as rights-holders while the government as a whole is tasked to be the duty-bearer, responsible for ensuring that said rights are upheld.[30] The MCW was also meant to inform further legislation and set the policy direction for Congress, in order that it may enact laws which enforce the rights under the MCW. Thus, the passing of the RH Law, three years after the MCW was enacted, should be seen as a continuation of the work started by the latter.

While the MCW was passed without much controversy, the same could not be said for the RH Law. In contrast with the relatively quick passing of the MCW, the RH Law languished for more than 13 years in Congress amidst strong opposition from the Catholic Church.[31]

II. THE CHALLENGE BEFORE THE SUPREME COURT

Once passed, the RH Law was immediately challenged as unconstitutional by 14 petitioners and two intervenors, representing various groups that oppose the use of modern contraception methods.[32]

There were three main areas of the law contested by petitioners and intervenors.

First, the petitioners alleged that the RH Law violated the constitutional protection given to the life and health of the unborn child because it allows access to and use of abortifacients such as contraceptives, which accordingly "[result] in abortion as they operate to kill the fertilized ovum which already has life."[33] Petitioners argued that the RH Law contravenes Article II, Section 12 of the Philippine Constitution,[34] which provides that —

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

29. *Id.* § 3, para. 5.

30. *Id.* § 3, para. 6.

31. The Partnership for Maternal, Newborn & Child Health, *supra* note 4.

32. *Imbong*, 721 SCRA at 256.

33. *Id.* at 289-90.

34. *Id.* at 289.

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> 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.[35]

In resolving this issue, the Court first dealt with the question of when life begins.[36] Based on the deliberations of the 1987 Constitutional Convention, medical literature, and the position paper by the Philippine Medical Association (PMA), the Court ruled that the moment of conception, as articulated in the Constitution, begins from fertilization.[37] It also found that the RH Law did not violate the particular provision of the Constitution since it only allows access to reproductive health services and supplies which are non-abortifacient.[38] Under the law, the term 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 [by] the [Food and Drug Administration (FDA)]."[39]

The second area objected to by the petitioners involved the issues of both parental and marital consent.

On the matter of parental consent, Section 7 of the RH Law provides that —

> 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.[40]

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35. PHIL. CONST. art. II, § 12.

36. *Imbong*, 721 SCRA at 293-305.

37. *Id.* at 304.

38. *Id.* at 373. Section 3 (d) of the RH Law provides that —

> 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[.]

The Responsible Parenthood and Reproductive Health Act of 2012, § 3 (d).

39. *Id.* § 4 (a).

40. *Id.* § 7, para. 2.

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The Court found this Section "anti-family"[41] and in contravention with the constitutional mandate "to protect and strengthen the family as an inviolable social institution."[42] It also stated that it was "deplorable" for the said provision to prevent parents from participating in the minor's decision-making process with regard to family planning just because said minor already suffered a miscarriage or is a parent himself or herself.[43] The only exceptions where parental consent is no longer required are in cases of emergency procedures and in elective procedures "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."[44]

Parenthetically, this ruling has been a major stumbling block for doctors and other health care providers dealing with the problem of teenage pregnancies, among others. In fact, the data presented in a national conference on Human Rights and Ethics-based Guide for Health Care Professionals Who Provide SRH (Sexual Reproductive Health) Care for Adolescents[45] showed that, in the Philippines, almost 15% of adolescent females aged 15 to 19 are sexually active[46] and estimated to number over 700,000 in 2016.[47]

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41. *Imbong*, 721 SCRA at 352.

42. *Id.* at 350 (citing PHIL. CONST. art. II, § 12).

43. *Id.* at 351-52.

44. *Id.* at 353-54 (citing The Responsible Parenthood and Reproductive Health Act of 2012, § 23 (a) (2) (ii)).

45. The conference, which was spearheaded by Dr. Junice L.D. Melgar, the Executive Director of Likhaan Center for Women's Health, was held on 28-29 November 2016.

46. *See* Philippine Statistics Authority & ICF International, Philippines National Demographic and Health Survey 2013, at 38, *available at* https://dhsprogram.com/pubs/pdf/FR294/FR294.pdf (last accessed May 12, 2017) [hereinafter Philippines National Demographic and Health Survey 2013]. The statistics on sexually active adolescent females covered a total sample of 3,237 adolescent females, as presented in Table 4.7 of the Philippines National Demographic and Health Survey 2013. *Id.* at 38, tbl. 4.7.

47. The Philippine Statistics Authority projects that there will be 4,932,800 adolescent females aged 15 to 19 in the Philippines in the year 2016. Philippine Statistics Authority, Projected Population, by Age Group, Sex, and by Single-Calendar Year Interval, Philippines: 2010-2020 (Medium Assumption) tbl. 4, *available at* https://psa.gov.ph/sites/default/files/attachments/hsd/pressrelease/Table4_9.pdf (last accessed May 12, 2017) [hereinafter Philippine Statistics Authority, Projected Population]. Using the prevailing percentage of sexually

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Adolescent fertility rate, or the number of live births per 1,000 adolescent girls aged 15 to 19, is 57, and estimated to number over 280,000 births in 2016.[48] A rough estimate of adolescent abortions based on the estimated median abortion rate for the Philippines is at 27 per 1,000;[49] if adjusted for the proportion of sexually active adolescents, it is 28,600 yearly.[50] The Department of Health (DOH) in 2011 estimated that 10-20% of most-at-risk populations are 17 years of age or younger, i.e., "30,000 boys who engage in male-to-male sex; 32,000 commercially and sexually exploited children; and 1,500 children who inject drugs."[51] Between January

active adolescent females aged 15 to 19, as shown in the Philippines National Demographic and Health Survey 2013, it is projected that there are 725,121 sexually active adolescent females aged 15 to 19 in 2016. *See* Philippines National Demographic and Health Survey 2013, *supra* note 46, at 38, tbl. 4.7.

48. Using the Philippine Statistics Authority's projection of 4,932,800 adolescent females aged 15 to 19 in the year 2016 and the prevailing fertility rate for females aged 15 to 19, as shown in the Philippines National Demographic and Health Survey 2013, the estimated number of live births in 2016 is at 281,169. *Compare* Philippines National Demographic and Health Survey 2013, *supra* note 46, at 42, tbl. 5.1 *with* Philippine Statistics Authority, Projected Population, *supra* note 47, tbl. 4.

49. Lawrence B. Finer & Rubina Hussain, Unintended Pregnancy and Unsafe Abortion in the Philippines: Context and Consequences, *available at* https://www.guttmacher.org/report/unintended-pregnancy-and-unsafe-abortion-philippines-context-and-consequences (last accessed May 12, 2017) (citing Fatima Juárez, et al., *The Incidence of Induced Abortion in the Philippines: Current Level and Recent Trends*, 31 INT'L FAM. PLAN PERSPECT. 140-49 (2005)). The report states that "[t]he most recent study on national abortion incidence in the Philippines used indirect estimation techniques and hospital records to estimate a rate of 27 abortions per 1,000 women of reproductive age in 2000, with lower and upper estimates of 22 and 31 abortions per 1,000 women." *Id.*

50. Philippines National Demographic and Health Survey 2013, *supra* note 46, at 37-38. The adjustment factor is 15/70 where 15% is the percentage of adolescents aged 15 to 19 who ever had sex and 70% is the percentage of all women aged 15 to 49 who ever had sex. *Id.*

51. Satwinder Rehal, *HIV/AIDS Prevention for Adolescents: Perspectives from the Philippines and Kenya*, ASIA-PACIFIC E-JOURNAL HEALTH SOC. SCI., Volume No. 1, Issue No. 1, at 4 (citing Department of Health National Epidemiology Center, Newly diagnosed HIV cases in the Philippines, *available at* http://www.doh.gov.ph/sites/default/files/statistics/NEC_HIV_Dec-AIDSreg2011.pdf (last accessed May 12, 2017)).

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to June 2016, the DOH registered 192 adolescents aged 16 to 19 years as having HIV, 189 of whom were infected through sexual contact.[52]

As to the issue on spousal consent, the RH Law also imposed a penalty for health care providers, both public and private, who "[r]efuse to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of ... [s]pousal consent in case of married persons: *Provided*, That in case of disagreement, the decision of the one undergoing the procedure shall prevail[.]"[53]

To this provision, the Court ruled that, save for life-threatening cases, decisions on reproductive health procedures involve the mutual consent of husband and wife as they relate to the right to found a family.[54] Citing Article XV, Section 3 (1) of the Constitution mandating the State to defend the right of spouses to found a family,[55] the Court said that founding a family is a shared right and decisions involving reproductive health procedures such

52. Department of Health Epidemiology Bureau — HIV/AIDS and ART Registry of the Philippines (HARP), Newly Diagnosed HIV Cases in the Philippines (January 2016) at 4, *available at* http://www.doh.gov.ph/sites/default/files/statistics/EB_HIV_Jan-AIDSreg2016.pdf (last accessed May 12, 2017) [hereinafter HARP, January 2016]; HARP, Newly Diagnosed HIV Cases in the Philippines (February 2016) at 4, *available at* http://www.doh.gov.ph/sites/default/files/statistics/EB_HIV_Feb-AIDSreg2016.pdf (last accessed May 12, 2017); HARP, Newly Diagnosed HIV Cases in the Philippines (March 2016) at 4, *available at* http://www.doh.gov.ph/sites/default/files/statistics/EB_HIV_Mar-AIDSreg2016.pdf (last accessed May 12, 2017); HARP, Newly Diagnosed HIV Cases in the Philippines (April 2016) at 4, *available at* http://www.doh.gov.ph/sites/default/files/statistics/EB_HIV_April-AIDSreg2016_a.pdf (last accessed May 12, 2017); HARP, Newly Diagnosed HIV Cases in the Philippines (May 2016) at 4, *available at* http://www.doh.gov.ph/sites/default/files/statistics/EB_HIV_May-AIDSreg2016.pdf (last accessed May 12, 2017); & HARP, Newly Diagnosed HIV Cases in the Philippines (June 2016) at 4, *available at* http://www.doh.gov.ph/sites/default/files/statistics/EB_HIV_June-AIDSreg2016_0.pdf (last accessed May 12, 2017).

53. The Responsible Parenthood and Reproductive Health Act of 2012, § 23 (a) (2) (i).

54. *Imbong*, 721 SCRA at 349-50.

55. "The State shall defend: (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood[.]" PHIL. CONST. art. XV, § 3 (1).

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as tubal ligation and vasectomy belong to both spouses, not just to one of them.[56] The Court further said —

> 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.[57]

The third issue raised by the petitioners dealt with the penalties in case the duties and obligations imposed under the RH Law were not complied with.[58] Petitioners claimed that the said duties and obligations violated their religious freedom and threatened them as conscientious objectors.[59] One of the duties objected to was the act of referring "the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible[.]"[60]

The Court agreed with the petitioners and found no compelling state interest "to justify the infringement of the conscientious objector's religious freedom."[61] Thus, the Court ruled

> 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 [or her] will, refers a patient seeking information on modern reproductive health products, services, procedures[,] and methods, his [or her] conscience is immediately burdened as he [or she] has been compelled to perform an act against his [or her] beliefs. ... .
>
> 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 [or she] is equally guilty if he [or she] abets the offensive act by indirect participation.[62]

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56. *Imbong*, 721 SCRA at 349 (citing PHIL. CONST. art. XV, § 3 (1)).

57. *Id.* (citing PHIL. CONST. art. XV, § 2).

58. *Id.* at 261.

59. *Id.* at 261 & 320.

60. The Responsible Parenthood and Reproductive Health Act of 2012, § 23 (a) (3).

61. *Imbong*, 721 SCRA at 341-42.

62. *Id.* at 335-36.

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As a result, the Supreme Court, in upholding the petitioners' freedom of religion and their standing as conscientious objectors, struck down the penal provisions not only as regards the referral system, but also as to any act manifesting a refusal to support the reproductive health programs under the RH Law.[63]

> Accordingly, the Court declares [Republic Act] No. 10354 as NOT UNCONSTITUTIONAL *except* with respect to the following provisions which are declared UNCONSTITUTIONAL:
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> ...
>
> [ ] Section [23 (a) (1)] and the corresponding provision in the [Implementing Rules and Regulations of the RH Law (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;
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> ...
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> [ ] 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;
>
> [ ] 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[.][64]

As can be observed, conscientious objection was sustained not only for refusing to provide patients with access to modern reproductive health services, but also for not referring said patients to other health care providers who would be willing to perform such services.[65] Furthermore, since the penalties were ruled out by the Court on constitutional grounds, an objector, whether he or she belongs to the public or private sector, would have the right to withhold information from a patient whose preference for reproductive health service is against the objectors' religious beliefs.[66] No

63. *Id.* at 375-76.

64. *Id.*

65. *Id.* at 376.

66. *Id.*

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penalty can be imposed on public officers who shall refuse "to support reproductive health programs or shall do any act that hinders the full implementation of a reproductive health program[.]"[67] Save for giving misinformation about modern reproductive health care, a public officer can manifest his or her non-support and interference in the implementation of the law without suffering any penalty for doing so.[68]

III. THE COMPELLING STATE INTEREST TEST

In arriving at its decision that facilitated referrals violated the religious freedom of conscientious objectors, the Court employed the compelling state interest test,[69] which was described in its 2006 Resolution in *Estrada v. Escritor*,[70] as having the following steps —

> 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.
>
> In its application, the compelling state interest test follows a three-step process, summarized as follows:
>
> If the plaintiff can show that a law or government practice inhibits the free exercise of his [or her] religious beliefs, the burden shifts to the government to demonstrate that the law or practice is necessary to the accomplishment of some important (or 'compelling') secular objective and that it is the least restrictive means of achieving that objective. If the plaintiff meets this burden and the government does not, the plaintiff is entitled to exemption from the law or practice at issue. In order to be protected, the claimant's beliefs must be 'sincere,' but they need not necessarily be consistent, coherent, clearly articulated, or congruent with those of the claimant's religious denomination. 'Only beliefs rooted in religion are protected by the Free Exercise Clause[;'] secular beliefs, however sincere and conscientious, do not suffice.[71]

Since there is no question as regards the existence of a burden in the form of penalties on the part of conscientious objectors once they refuse to refer patients to other health care providers, albeit not in an emergency situation, the discussion will focus on whether the proviso in the law that

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67. *Imbong*, 721 SCRA at 376.

68. *Id.*

69. *Id.* at 446.

70. Estrada v. Escritor, 492 SCRA 1 (2006).

71. *Id.* at 63-64 (citing Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1410, 1416-67 (1990)).

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burdens the conscientious objectors "is necessary to the accomplishment of some important (or 'compelling') secular objective and that it is the least restrictive means of achieving that objective."[72]

The framing of the compelling state interest is important because the standard set in order for the conscientious objector not to be accommodated is high. Thus, at the outset, the Court in *Imbong* has stated that —

> *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 [or her] conscience directs, to profess his [or her] beliefs, and to live as he [or she] believes he [or she] ought to live, consistent with the liberty of others and with the common good.'*[73]

The Court continues —

> 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 [or her] mind and the liberty not to utter what is not in his [or her] mind. 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.*[74]

The decision draws justification from the case of 2003 *Estrada v. Escritor* case, stating that "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."[75] However, this is true only for as long as there is no outward manifestation of such religion. A perusal of *Escritor* would reveal that this statement was referring to the realm of belief.[76] Thus —

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72. *Id.*

73. *Imbong*, 721 SCRA at 254 (citing Islamic Da'wah Council of the Philippines, Inc. v. Office of the Executive Secretary, 405 SCRA 497, 504 (2003)).

74. *Imbong*, 721 SCRA at 336 (citing Ebralinag v. The Division Superintendent of Schools of Cebu, 219 SCRA 256, 275 (1993) (J. Cruz, separate opinion) & Estrada v. Escritor, 408 SCRA 1, 134 (2003)) (emphasis supplied).

75. *Imbong*, 721 SCRA at 336 (citing *Escritor*, 408 SCRA at 134).

76. *Escritor*, 408 SCRA at 134.

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> 1. *Free Exercise Clause*
>
> 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. The Free Exercise Clause principally guarantees voluntarism, although the Establishment Clause also assures voluntarism by placing the burden of the advancement of religious groups on their intrinsic merits and not on the support of the [State]. In interpreting the Free Exercise Clause, the *realm of belief* poses no difficulty. The early case of *Gerona v. Secretary of Education* is instructive on the matter, *viz* [—]
>
> *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.[77]

Clearly in *Imbong*, the religious objectors' refusal to refer patients to other health care providers who can give the patients access to modern contraceptives does not fit into the realm of mere belief. Nor does such refusal categorically fall under the "intertwined ... right to free speech," which "in turn includes the right to be silent."[78] It could be observed that in all the leading cases cited in *Imbong* and *Escritor* where the free exercise of religion has prevailed, the competing interest did not involve another person's right. Thus, in *American Bible Society v. City of Manila*,[79] what impeded the sale of bibles was the necessity of securing a mayor's permit.[80] In *Sherbert v. Verner*,[81] the Court upheld religious liberty over an unemployment compensation fund and work schedule.[82] In *Ebralinag v. The Division Superintendent of Schools*,[83] what ran counter to the State interest was the refusal to salute the flag,[84] and in 2006 resolution of *Escritor*, the Court

77. *Id.* (citing Gerona, et al. v. Secretary of Education, et al., 106 Phil. 2, 9-10 (1959)).

78. *Imbong*, 721 SCRA at 336.

79. American Bible Society v. City of Manila, 101 Phil. 386 (1957).

80. *Id.* at 388.

81. Sherbert v. Verner, 374 U.S. 398 (1963).

82. *Id.* at 406-07.

83. Ebralinag v. The Division Superintendent of Schools of Cebu, 219 SCRA 256 (1993).

84. *Id.* at 270.

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did not find the government's abstract claim of "preservation of marriage and the family as basic social institutions" as a compelling state interest.[85]

Plainly, the State's competing interests in the above cases merely concerned the government itself, without affecting an identifiable concrete right belonging to a third party — a "rights-holder" that can be impaired with the exercise of conscientious objection.

Furthermore, the Court quotes *Escritor* in advancing arguments that religion should be protected from the battery of the State, thus —

> The 'compelling state interest' test is proper where conduct is involved for the whole gamut of human conduct has different effects on the [S]tate'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 [S]tate in preventing a substantive evil, whether immediate or delayed, is therefore necessary. However, not any interest of the [S]tate 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. ... As held in *Sherbert*, only the gravest abuses, endangering paramount interests can limit this fundamental right. ... The test requires the [S]tate to carry a heavy burden, a compelling one, for to do otherwise would allow the [S]tate to batter religion, especially the less powerful ones[,] until they are destroyed. In determining which shall prevail between the [S]tate'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 [S]tate.[86]

This scenario, however, does not apply to the Philippines. There has been no "battery" of the Catholic Church, especially on the issue of women's reproductive rights. In fact, one of the reasons why it took more than 13 years for the RH Law to pass is because of the strong opposition of Catholic groups.[87] During the congressional deliberations, the law was also met with resistance from members of both the House of Representatives and Senate who unapologetically invoked their personal religious beliefs as basis for their opposition.[88]

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85. *Escritor*, 492 SCRA at 83-85.

86. *Imbong*, 721 SCRA at 330-31 (citing *Escritor*, 492 SCRA at 71-72) (emphases omitted).

87. The Partnership for Maternal, Newborn & Child Health, *supra* note 4.

88. *See* H. JOURNAL No. 2, at 1-49, 15th Cong., 3d Reg. Sess. (July 24, 2012) & S. JOURNAL No. 44, at 1272-311, 15th Cong., 3d Reg. Sess. (Dec. 6, 2010).

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Even in the decision itself, the Court acknowledged that

> [n]othing has polarized the nation more in recent years than the issues of population growth control, abortion[,] and contraception. ... From television debates to sticker campaigns, from rallies by socio-political activists to mass gatherings organized by members of the clergy — 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, [the RH Law] was enacted by Congress on [21 December] 2012.[89]

The Court subsequently articulated what the State interests were that challenged the conscientious objectors.[90]

> 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 [or her] religious belief and conviction, it would be violative of 'the principle of non-coercion' enshrined in the constitutional right to free exercise of religion.[91]

Two points should be raised in the Court's application of the compelling state interest test. The first one is the lack of appreciation of women's imperative need to have access to modern contraception and other reproductive health services as a matter of right.

Although the Court was correct in enumerating the services to women in the RH Law, it underappreciated what the most compelling interest was in providing for a more enforceable provision in the RH Law. The competing and compelling state interest in the RH Law refers not only to the government's ability to provide and maintain a responsive health care system in a broad sense, or as the Court puts it, provide "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[.]"[92] More particularly and directly, the compelling interest here involves the effective access of women — more than men — to

89. *Imbong*, 721 SCRA at 255-56.

90. *Id.* at 336.

91. *Id.* (emphasis supplied).

92. *Id.*

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modern methods of contraception. The Court is not oblivious to this fact and has acknowledged that over the years, "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, reproductive health."[93] The Court expounded —

> 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. 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* (sic) *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.[94]

Despite this recognition, the Court still denied that a compelling state interest worthy of a challenge to conscientious objection was present.[95] Thus,

> [r]esultantly, 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.
>
> ...
>
> 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

93. *Id.* at 292-93.

94. *Id.* at 272 (emphasis supplied).

95. *Imbong*, 721 SCRA at 341.

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> all. [] The burden placed upon those who object to contraceptive use is immediate and occurs the moment a patient seeks consultation on reproductive health matters.[96]

The burden caused to a woman who has been denied access to modern contraception because of information or service withheld by a conscientious objector, though not "immediate," is nevertheless substantial, especially if the one refusing happens to be a government health care provider. It is in government that the poor usually relies for their health needs, including reproductive health needs. The inability to plan pregnancies or the desired number of children is a very real and valid issue for women, particularly poor women. The Court itself recognized that the RH Law prioritizes the needs of the poor when it reasoned that the law "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."[97] Clearly, this policy benefits poor women the most, and when government is given the choice to opt-out of service, they are also the ones affected the most.

Furthermore, instead of buttressing its earlier observation that the RH Law was enacted to "fortify" existing laws of similar purpose,[98] the Court instead underscored its inconsequentiality because of the presence of other laws.[99] Thus, the Court declared,

> [a]t 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, [Republic Act No.] 4729 or the Contraceptive Act, [Republic Act No.] 6365 or 'The Population Act of the Philippines[,]' and [Republic Act No.] 9710, otherwise known as '*The Magna Carta of Women*,' amply cater to the needs of women in relation to health services and programs.[100]

And —

> 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 ([Republic Act] No. 6365), the Contraceptive Act ([Republic Act] No. 4729)[,] and the reproductive health for women or

96. *Id.* at 341-42 (emphases omitted).

97. *Id.* at 372.

98. *Id.* at 272.

99. *Id.* at 343 & 375.

100. *Id.* at 343.

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> The Magna Carta of Women ([Republic Act] 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.[101]

Without the provisions which make it compulsory for health care providers to render service to women who want to avail of modern contraception, there is danger that the RH Law will once again be counted as just one of those laws which will frustrate women, especially those who rely on free services coming from the government. That the MCW contains a specific provision on women's right to health[102] would be of no consequence.

This narrow appreciation of women's rights can be observed not only regarding access to reproductive rights vis-à-vis conscientious objection; it is also evident in the Court's decision on marital consent. As mentioned above, the penalty for health care service providers who refuse to perform legal and medically-safe reproductive health procedures on any married person of legal age on the ground of lack of spousal consent has also been struck down by the Court.[103] The Court saw this as anti-family despite the proviso that states "[*p*]*rovided*, [t]hat in case of disagreement, the decision of the one undergoing the procedure shall prevail[.]"[104]

> 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. [Article XV, Section 3] 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.
>
> ...
>
> 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 size of the family or the number of their children significantly matters. The decision whether or not to undergo the procedure belongs exclusively to,

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101. *Imbong*, 721 SCRA at 375.

102. *See* The Magna Carta of Women, § 17.

103. *Imbong*, 721 SCRA at 349.

104. The Responsible Parenthood and Reproductive Health Act of 2012, § 23 (a) (2) (i).

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> 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 [Teresita J.] Leonardo-De Castro, Section 19 (c) of [Republic Act] 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.[105]

The Author posits that there is little debate as to who, between the husband and the wife, would be at a more disadvantageous position when it comes to decision-making about reproductive autonomy. Evidently, this will have more negative impact on women than men because, within the Philippine context, the concern is not so much about the reproductive autonomy of men or their ability to assert it against their wives. It is the women who encounter barriers in asserting their reproductive rights, either because they do not have the proper information to arrive at an informed decision or do not have the resources to spend for the services they need.[106] Women do not need another barrier from the law stating that they cannot choose to undergo a procedure to ensure that they would not be giving birth anymore without the consent of their husbands.

The rationale of the Court not only disregards the decision of the wife to undergo the procedure; it has the effect of making the decision of the husband who opposes the procedure prevail because, according to the Court, they must decide together. The above-cited provision of the MCW should be interpreted as reinforcing women's participation in their right to decide, not so much about their husband's reproductive rights but their own. This is a setback in the recognition of women's human rights considering

105. *Imbong*, 721 SCRA at 349-50 (emphases omitted).

106. *See* Philippines National Demographic and Health Survey 2013, *supra* note 47, at 78-80 & 86. Added to these are the pressures that may come from their local officials and their church. University of the Philippines School of Economics, Population, Poverty, Politics and the Reproductive Health Bill at 4, *available at* http://www.econ.upd.edu.ph/dp/index.php/dp/article/viewFile/670/132 (last accessed May 12, 2017).

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that in *Garcia v. Drilon*,[107] the Court, in holding that Republic Act No. 9262, the Anti-Violence Against Women and Their Children Act of 2004 was constitutional,[108] has categorically acknowledged the unequal power relationship between women and men and the dominance of husbands over their wives, manifested in violence.[109] Thus,

> [a]ccording to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), violence against women (VAW) is deemed to be closely linked with the unequal power relationship between women and men[,] otherwise known as 'gender-based violence[.'] Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And VAW is a form of men's expression of controlling women to retain power.
>
> The United Nations, which has long recognized VAW as a human rights issue, passed its Resolution 48/104 on the [CEDAW] on [20 December] 1993 stating that '[VAW] is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions, compared with men.'
>
> ...
>
> The feminist movement exposed the private invisibility of the domestic violence to the public gaze. They succeeded in transforming the issue into an important public concern. No less than the United States Supreme Court, in [the] 1992 case *Planned Parenthood v. Casey*, noted that [—]
>
> [I]n an average 12-month period in this country, approximately two million women are the victims of severe assaults by their male partners. In a 1985 survey, women reported that nearly one of every eight husbands had assaulted their wives during the past year. The [American Medical Association (AMA)] views these figures as 'marked underestimates,' because the nature of these incidents discourages women from reporting them, and because surveys typically exclude the very poor, those who do not speak English well, and women who are homeless or in institutions or hospitals when the survey is conducted. According to the AMA, '[r]esearchers on family violence agree that the true incidence of partner violence is probably

107. Garcia v. Drilon, 699 SCRA 352 (2013).

108. *Id.* at 434.

109. *Id.* at 411-16.

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> *double* the above estimates; or four million severely assaulted women per year.'[110]

Justice Ruth Bader Ginsburg, in her dissent in the case of *Burwell v. Hobby Lobby Stores, Inc.*,[111] perfectly articulated compelling interest, the limitation of the Religious Freedom Restoration Act (RFRA), and the importance of the reproductive rights of women.[112]

> 'The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.'
>
> ...
>
> RFRA's purpose is specific and written into the statute itself. The Act was crafted to 'restore the compelling interest test as set forth in [*Sherbert*] ... and *Wisconsin v. Yoder* ... , and to guarantee its application in all cases where free exercise of religion is substantially burdened.' ... ('[T]he compelling interest test[,] as set forth in prior Federal court rulings[,] is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.').
>
> ...
>
> Even if one were to conclude that Hobby Lobby and Conestoga meet the substantial burden requirement, the Government has shown that the contraceptive coverage for which the [Patient Protection and Affordable Act of 2010 (ACA)] provides furthers compelling interests in public health and women's well[-]being. Those interests are concrete, specific, and demonstrated by a wealth of empirical evidence. To recapitulate, the mandated contraception coverage enables women to avoid the health problems unintended pregnancies may visit on them and their children. ... The coverage helps safeguard the health of women for whom pregnancy may be hazardous, even life threatening. ... And the mandate secures benefits wholly unrelated to pregnancy, preventing certain cancers, menstrual disorders, and pelvic pain.
>
> That Hobby Lobby and Conestoga resist coverage for only [four] of the 20 FDA-approved contraceptives does not lessen these compelling interests.
>
> ...
>
> The Court ultimately acknowledges a critical point [—] RFRA's application '*must* take adequate account of the burdens a requested accommodation may impose on non[-]beneficiaries.' ... No tradition, and

110. *Id.* at 411-14 (citing Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 891 (1992)) (emphases omitted).

111. Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014) (U.S.).

112. *Id.*

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> no prior decision under RFRA, allows a religion-based exemption when the accommodation would be harmful to others — here, the very persons the contraceptive coverage requirement was designed to protect. ... ('[The] limitations which of necessity bound religious freedom ... begin to operate whenever activities begin to affect or collide with liberties of others or of the public.').[113]

Taking from Justice Ginsburg's limits on religious freedom, the second point worth discussing in the application of the compelling state interest test is the Court's pronouncement that the act of referring patients in a non-life threatening condition to another facility violates the religious freedom of conscientious objectors.[114]

> Also, the respondents have not presented any government effort exerted to show that the means it takes to achieve its legitimate [S]tate objective is the least intrusive means. Other than the assertion that the act of referring would only be momentary, considering that the act of referral by 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.[115]

Specifically, the Author takes exception to the all-inclusive accommodation of religious objectors, whether or not they hold public office, and regardless of the code of ethics they adhere to in their own medical professions.

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113. *Id.* at 2788, 2791, & 2799-801.

> In these cases, the United States Supreme Court sustained the owners of three closely held for-profit corporations which alleged that they have sincere Christian beliefs that life begins at conception and that it would violate their religion to facilitate access to contraceptive drugs or devices that operate after that point. *Id.* at 2759.
>
> According to Justice Ginsburg, religious exemptions should be confined to "organizations formed 'for a religious purpose,' 'engage[d] primarily in carrying out that religious purpose,' and not 'engaged ... [ ] substantially in the exchange of goods or services for money beyond nominal amounts.'" *Id.* at 2805-06.

114. *See Imbong*, 721 SCRA at 376.

115. *Imbong*, 721 SCRA at 342 (emphasis omitted).

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It should be pointed out that, independently of the RH Law, the conscientious objectors who are in the medical and nursing professions are duty-bound to observe their respective code of ethics with regard to how they should treat patients and respect their rights. Thus, to the extent that their patient's well-being is concerned, the conscientious objectors as medical professionals already open themselves to the very real possibility that their religious beliefs could be reasonably, but necessarily, restricted or "burdened."

According to the Code of Ethics of the Philippine Medical Association,[116] "[t]he primary objective of the practice of medicine is service to mankind irrespective of race, age, disease, disability, gender, sexual orientation, social standing, creed[,] or political affiliation."[117] It also states that "[t]he physician should cherish a proper pride in the calling and conduct himself/herself in accordance with [the] Code and in the generally accepted principles of the International Code of Medical Ethics."[118] In emergency but not life threatening cases, the duty to refer "the patient to the primary physician and/or to a more competent health provider and appropriate facility if necessary"[119] is articulated in Section 3. This proviso is complemented by a provision in the World Medical Association's International Code of Medical Ethics,[120] which states that "[a physician shall] owe his/her patients complete loyalty and all the scientific resources available to him/her. Whenever an examination or treatment is beyond the physician's capacity, he/she should consult with or refer to another physician who has the necessary ability."[121]

The Code of Ethics for Registered Nurses is covered by Board of Nursing Resolution No. 220, Series of 2004.[122] Specifically, under Article III, Section 8 it provides —

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116. Philippine Medical Association, Code of Ethics of the Philippine Medical Association, *available at* https://www.philippinemedicalassociation.org/downloads/pma-codes/FINAL-PMA-CODEOFETHICS2008.pdf (last accessed May 12, 2017).

117. *Id.* art. 1, § 1.

118. *Id.*

119. *Id.* art. 1, § 3.

120. World Medical Association, WMA International Code of Medical Ethics, *available at* https://www.wma.net/policies-post/wma-international-code-of-medical-ethics (last accessed May 12, 2017).

121. *Id.*

122. Board of Nursing, Promulgation of the Code of Ethics for Registered Nurses, Board Resolution No. 220, Series of 2004 (July 14, 2004).

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> Ethical Principle
>
> (4) Registered Nurses are the advocates of the patients [—] they shall take appropriate steps to safeguard their rights and privileges.
>
> Guidelines to be observed:
>
> [Registered] Nurses must
>
> (a) [R]espect the "Patients' Bill of Rights" in the delivery of nursing care[;]
>
> (b) [P]rovide the patients or their families with all pertinent information[,] except those which may be deemed harmful to their well-being[; and]
>
> (c) [U]phold the patients' rights when conflict arises regarding management of their care.[123]

In both professions, the patients' well-being is accorded priority. The decisions as to the kind of treatment or care they want to receive also belong to the patients after information on all options is given to them. Surely, an act of referring them to other doctors willing to perform the procedures — or nurses willing to assist — is reasonable, fair, and proper. It is also part of the work ethic of the conscientious objectors who belong to these professions. Facilitated referrals "ensure that the [objectors do] not violate their religious and moral beliefs by directly participating, while at the same time[,] enabling the patient to receive [his or her choice of care and treatment]."[124]

This argument becomes more compelling if these medical health providers actually work for the government. This fact makes them public servants occupying positions of public trust. In *Civil Service Commission v. Cortez*,[125] the Court said —

> Respondent should be reminded that a public servant must exhibit[,] at all times[,] the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty[,] and efficiency, act with patriotism and justice, and lead modest lives. [These] constitutionally-

123. *Id.* art. 1, § 8.

124. *See* Jere Odell, et al., Conscientious Objection in the Healing Professions: A Reader's Guide to the Ethical and Social Issues (Abortion and Contraception) 2, *available at* https://scholarworks.iupui.edu/bitstream/handle/1805/4463/conscientiousobjectionabortion.pdf?sequence=1&isAllowed=y (last accessed May 12, 2017).

125. Civil Service Commission v. Cortez, 430 SCRA 593 (2004).

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> enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service. In addition, the Code of Conduct and Ethical Standards for Public Officials and Employees ([Republic Act] No. 6713) enunciates the State Policy of promoting a high standard of ethics and utmost responsibility in the public service.
>
> To end, it must be stressed that dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect [ ] the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[126]

Medical professionals can choose not to be public servants. They have greater control in deciding where to work, compared to the "control" poor patients have in choosing where to go for their reproductive health needs.[127] The RH Law identifies poor women as one of the priority beneficiaries of reproductive health care and services and it tasks the national government with the primary responsibility for providing "reproductive health care, information[,] and supplies giving priority to poor beneficiaries[.]"[128] They depend on government and its health care providers. They do not have the luxury of opting for a private hospital for lack of resources. They will suffer injustice and discrimination on the basis of their opposing belief or "creed" from the government provider if they are denied even the information about their options or where they could possibly avail of the procedures they want.

Given the mandate of the Code of Ethics intrinsic to their professions, and the "public trust" aspect of their employment in government, it can be said that the system of referring patients to other non-objecting providers is the least restrictive means of achieving the RH Law's objective to provide "access to a full range of legal, medically-safe, non-abortifacient[,] and effective family planning methods[.]"[129] Thus, the exercise of conscientious objection to facilitated referrals by government medical practitioners should yield to the more compelling interest of patients' access to reproductive health needs and their choice of treatment and care.

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126. *Id.* at 607-08.

127. *See* Mary K. Collins, *Conscience Clauses and Oral Contraceptives: Conscientious Objection or Calculated Obstruction?*, 15 ANNALS HEALTH L. 37, 57 (2006).

128. *See* The Responsible Parenthood and Reproductive Health Act of 2012, §§ 2 (d), 3 (b), 3 (e), & 3 (g).

129. The Responsible Parenthood and Reproductive Health Act of 2012, § 23 (a) (1).

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IV. CONCLUSION

The dominant rhetoric of the Court in *Imbong* has been the value of religious freedom and its "preferred position in the hierarchy of rights — 'the most inalienable and sacred of all human rights[.]'"[130] It showed less appreciation for women's rights as human rights, women's rights to non-discrimination, and the use of a rights-based approach in the promotion of women's reproductive rights.

The end goal of most rights-based reproductive health agendas is to have reproductive and sexual health programs which are comprehensive, available, and accessible to all who need them. It is important that women's access to such programs be free from discrimination and recrimination. In *Garcia*, the Court said —

> We reiterate here Justice [Reynato S.] Puno's observation that 'the history of the women's movement against domestic violence shows that one of its most difficult struggles was the fight against the violence of law itself. If we keep that in mind, law will not again be a hindrance to the struggle of women for equality but will be its fulfillment.'[131]

It is ironic that the hindrance to the RH Law's full implementation has been the Court's adjudication, inter alia, that women's access to reproductive health rights and needs does not qualify as a compelling state interest when pitted against the right of conscientious objectors. It also did not even consider the prospect that a facilitated referral is the least restrictive means of implementing the RH Law, compared to having the objectors perform the service themselves. The Court saw both of these "impositions" as "a clear inhibition of a constitutional guarantee which [it] cannot allow."[132] What is most lamentable though is that the Court struck down the penalties imposed under the RH Law against "any healthcare service provider" where there is refusal "to disseminate information regarding programs and services on reproductive health" and where there is refusal to refer a patient "to another health care service provider within the same facility or one which is conveniently accessible[.]"[133] This wholesale accommodation has the effect of including government medical professionals, despite the fact that they are bound not only by their Code of Ethics which prioritize service to patients, but also by their mandate that as public servants, they occupy positions

130. *Imbong*, 721 SCRA at 331.

131. *Garcia*, 699 SCRA at 434.

132. *Imbong*, 721 SCRA at 338.

133. *Id.* at 375-76.

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imbued with public trust, and as such, they are at all times accountable to the people.

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