

Proponent: The Provisions of the RH Bill as Productive Approaches in Addressing Present Philippine Issues

Emmanuel Rey P. Cruz*

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I am convinced that some political and social activities and practices of the Catholic organizations are detrimental and even dangerous for the community as a whole, here and everywhere. I mention here only the fight against birth control at a time when overpopulation in various countries has become a serious threat to the health of people and a grave obstacle to any attempt to organize peace on this planet.

— Albert Einstein¹

No woman can call herself free who does not own and control her body. No woman can call herself free until she can choose consciously whether she will or will not be a mother.

— Margaret Sanger²

Doesn't every woman deserve the right to have a safe pregnancy and a baby that's born healthy? I believe this is a very basic human right.

* '12 J.D. cand., Ateneo de Manila University School of Law. Member of the Board of Editors, *Ateneo Law Journal*. He was the Associate Lead Editor of the fourth issue of the 54th volume. The Author has previously written *Outlawing Lolita: Testing the Constitutionality and Practicality of the “Victimless” Provisions of the Anti-Child Pornography Act of 2009*, 55 *ATENELO L.J.* 757 (2010).

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1. Albert K. Einstein, Peace Quotes, *available at* http://www.thinkexist.com/English/Topic/x/Topic_280_1.htm (last accessed May 23, 2011).

2. Margaret H. Sanger, My Quotations, *available at* http://thinkexist.com/quotation/no_woman_can_call_herself_free_who_does_not_own/342945.html (last accessed May 23, 2011).

— Katya Matanovic³

I. INTRODUCTION

The Reproductive Health (RH) Bill⁴ is one of the most controversial pieces of legislation in recent history.⁵ Of bills past, it is hard to think of a more contentious, more notorious proposal that pitted, at least in the mass media, Church against State, liberals against conservatives, legislative intent against popular opinion, and experts against laymen.

For the purposes of this Essay, it is important to emphasize, and perhaps harp on the caveat that the “Pro-RH Bill” and “Anti-RH Bill” labels are misleading, even intellectually unsound, given that the RH Bills, by themselves, are numerous and hardly identical in composition, though they have similarities with respect to matters being addressed. However, regardless of consolidation into a singular text, one cannot generalize on the practical good or practical evil of such a bill without going into the *issues* embodied in the same. Thus, this discussion, instead of being labeled a “Pro-RH Bill” Essay, should properly be seen as a Proponent Essay for “RH Bill Issues.”

It is needless to state, but the Author states nonetheless, that “Pro-Choice” individuals are not necessarily “Pro-RH Bill” and “Pro-Life” individuals are not necessarily “Anti-RH Bill.” Hasty conclusions as to the intentions of an individual in supporting the proposals in an RH Bill cannot be left to guesswork. It is on the premise that opinions are divergent with respect to the RH Bill that the Author makes the following analysis and discussion of RH Bill Issues.

It is submitted that, generally speaking, the provisions of the RH Bill are drafted with *good intentions*. It is quite unthinkable that Congress, in the

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3. Katya Matanovic, Population & Reproductive Health, *available at* http://changingthepresent.org/population_and_reproductive_health/quotes (last accessed May 23, 2011).
 4. An Act Providing for a Comprehensive Policy on Responsible Parenthood, Reproductive Health, and Population and Development, and for Other Purposes, H.B. No. 4244, 15th Cong., 1st Reg. Sess. (Feb. 17, 2011).
 5. *See generally* Eladio C. Dioko, *The RH bill controversy*, PHIL. STAR, Oct. 7, 2010, *available at* <http://www.philstar.com/Article.aspx?articleId=618733&publicationSubCategoryId=109> (last accessed May 23, 2011); Joaquin G. Bernas, S.J., *The many faces of the RH bill*, PHIL. DAILY INQ., Nov. 3, 2008, *available at* http://opinion.inquirer.net/inquireropinion/columns/view/20081103169885/The_many_faces_of_the_RH_bill (last accessed May 23, 2011); & Jojo P. Malig, Philippines still divided on reproductive health bill, *available at* <http://www.abs-cbnnews.com/-depth/05/08/11/philippines-stilldividedreproductive-health-bill> (last accessed May 23, 2011).

exercise of its plenary power, would propose measures that would be so patently invalid that such would not pass constitutional muster. Also, it would be unlikely for Congress to propose legislation that would be detrimental to the citizenry in the future. It is true, however, that some of the issues embodied in an RH Bill are more contentious than the others and deserve scrutiny both through the wisdom of our duly elected representatives and public opinion. Granting these, the Author still maintains that such proposals, which are to be discussed in this Essay, are valid and commendable, and that these proposals should be enacted into law, regardless of opposition from some sectors of Philippine society.

II. THE RH BILL ISSUES

One of the preliminary issues arising from a discussion of the consolidated RH Bill is the issue of reproductive health rights.⁶ The Author argues that, consistent with the intent of the RH Bill, reproductive health, and the rights arising from it should be given paramount importance and warrants immediate legislative action from the State.

Further, the designation of “Family Planning Supplies” as essential medicines will be discussed as an integral component of the RH Bill. The Author argues that such a designation of “Family Planning Supplies” is significant in ensuring the enjoyment of reproductive health rights.

The Author also posits that the issue of “freedom of choice,” that is, on the part of objectors arising from legitimate personal beliefs, is safeguarded. A discussion will also be made to show that in protecting reproductive health rights, the personal beliefs of the persons “obligated” to guarantee the said rights will not be infringed on, and that the ensuing penal liabilities, if any, are justified.

Lastly, the question respecting the allocation and disbursement of taxpayer’s money pursuant to the purchase of “Family Planning Supplies” and the education of the citizenry, both in the public and the private sector, will be answered. The Author argues that such allocation and disbursement is determinative of the State’s commitment to protect reproductive health rights, and that the question should be answered in a resounding affirmative.

III. THE BIRTH OF REPRODUCTIVE HEALTH RIGHTS

The concept of reproductive health rights first saw its genesis through the United Nation’s (UN) 1968 International Conference on Human Rights,⁷

6. *Id.*

7. The International Human Rights Conference was held on April 22 to May 13, 1968, which resulted in the Proclamation of Teheran.

which resulted in the 1968 Proclamation of Teheran (Proclamation).⁸ It was a reaction to the adoption of the Universal Declaration of Human Rights,⁹ which did not include reproductive health rights in its provisions.¹⁰ The Proclamation, without using the label “reproductive health rights,” states that “[p]arents have a basic human right to determine freely and responsibly the number and the spacing of their children.”¹¹ The Provision was reiterated in the 1969 Declaration on Social Progress and Development,¹² a binding resolution issued by the UN General Assembly. These statements, however, did not indicate the means and methods, much less the limitations, for exercising the said right.

While reproductive health rights cover a wide plethora of debatably permissible behavior, the means and methods that would be apt for discussion in the Philippine context is actually that of birth control. The term “birth control,” which goes as far as 1914, was made popular by Margaret Sanger.¹³ Sanger was a birth control advocate who disseminated information to “prevent conception,”¹⁴ which she believed was “the *only* cure for abortions.”¹⁵

Under Article II, Section 15 of the 1987 Philippine Constitution, it is mandated that “[t]he State shall protect and promote the right to health of the people and instill health consciousness among them.”¹⁶ According to Fr. Joaquin Bernas, S.J., this is “a statement of the basic ideological principles and policies that underlie the Constitution. As such, [Article II, Section 15] shed[s] light on the meaning of the other provisions of the Constitution and [it is] a guide for all departments of the government in the implementation

8. International Human Rights Conference, Teheran, Iran, Apr. 22–May 13, 1968, *Proclamation of Teheran*, U.N. Doc. A/CONF.32/41, at 3 (1968) [hereinafter *Proclamation of Teheran*].

9. *See generally* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 71 (Dec. 10, 1948).

10. *Id.*

11. *Proclamation of Teheran*, *supra* note 8.

12. Declaration on Social Progress and Development, G.A. Res. 24/2542 (XXIV), U.N. Doc. A/RES/24/2542(XXIV), art. 4 (Dec. 11, 1969).

13. *See generally* Margaret Sanger, *Suppression*, 1 THE WOMAN REBEL 4, 25 (1914) & JIMMY ELAINE WILKINSON MEYER, ANY FRIEND OF THE MOVEMENT: NETWORKING FOR BIRTH CONTROL (2004 ed.).

14. Margaret Sanger, Family Limitation, *available at* http://www.nyu.edu/projects/sanger/web_edition/app/documents/show.php?sanger_Doc=320179.xml (last accessed May 23, 2011).

15. *Id.*

16. *Id.*

of the Constitution.”¹⁷ Because of this, it may be argued that Article II, Section 15, as it is, does not provide for “enforceable rights” and it becomes incumbent upon Congress to enact further measures.¹⁸ Consequently, by advocating the passage of an RH Bill, Congress is actually obeying the constitutional mandate and should be given as much leeway as possible in ensuring the right to health and health consciousness of its constituents.

Since the “right to health” and “health consciousness” covers a manifold of general concerns, and it is difficult to assume that the mere invocation of such principles would automatically warrant enforcement of reproductive health rights, there is still a need to inspect the international commitments of the Philippines which are not contrary to the Constitution and which would support the cause of reproductive health rights. Two of such commitments are the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁹ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²⁰

The ICESCR, in Article 12.1, provides for the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²¹ Also, Article 12.2 (a) provides that, “the steps to be taken ... to achieve the full realization of this right shall include those necessary for ... the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.”²² From these Provisions, it is clear that the obligations under the ICESCR include reproductive health concerns.

CEDAW, in Article 12.1, crystallizes the obligation to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”²³ The Philippines, because of its commitment to non-discrimination, is

17. JOAQUIN G. BERNAS, S.J., *THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER* 7 (2006 ed.).

18. *Compare* PHIL. CONST. art. II, § 15, *with* PHIL. CONST. art. II, § 16, which “recognizes an enforceable ‘right.’” BERNAS, *supra* note 17, at 19.

19. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316, at 49 (Dec. 16, 1966) [hereinafter ICESCR].

20. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46, at 193 (Dec. 18, 1979) [hereinafter CEDAW].

21. ICESCR, *supra* note 19, art. 12.1.

22. *Id.* art. 12.2 (a).

23. CEDAW, *supra* note 20, art. 12.1.

expected to actualize this tenet in health care services.²⁴ Thus, including this obligation in an RH Bill is consistent with the CEDAW.

IV. FAMILY PLANNING SUPPLIES AS ESSENTIAL MEDICINES

The texts of the RH Bills,²⁵ prior to becoming House Bill (H.B.) No. 4244,²⁶ are consistent as to the designation of “Family Planning Supplies as Essential Medicines,”²⁷ except for the seven-sectioned Syjuco Bill.²⁸ The same designation persists in the *consolidated* and *substituted* H.B. No. 4244.²⁹ This consistency is by no means accidental, since it indicates the understanding of our legislators that the designation of family planning supplies as essential medicines is essential in safeguarding reproductive health rights.

The necessity of such designation is premised on (a) the nature of the National Drug Formulary and (b) the definition of essential medicines.

24. Phyra M. McCandless, *The Fallacy of Mandating Contraceptive Equity: Why Laws that Protect Women with Health Insurance Deepen Institutional Discrimination*, 42 U.S.F.L. REV. 1115, 1137 (2008).

25. See An Act Providing for a National Policy on Reproductive Health, Responsible Parenthood and Population and Development, and for Other Purposes, H.B. No. 96, 15th Cong., 1st Reg. Sess., explan. n. (July 1, 2010); An Act Providing for a National Policy on Reproductive Health and Population and Development, and for Other Purposes, H.B. No. 513, 15th Cong., 1st Reg. Sess., explan. n. (July 1, 2010); An Act Providing for a National Policy on Reproductive Health and Population and Development, and for Other Purposes, H.B. No. 101, 15th Cong., 1st Reg. Sess., explan. n. (July 1, 2010); An Act to Protect the Right of the People to Information about Reproductive Health Care Services, H.B. No. 1520, 15th Cong., 1st Reg. Sess. (July 19, 2010); An Act Providing for a National Policy on Reproductive Health and Population and Development, and for Other Purposes, S.B. No. 2378, 15th Cong., 1st Reg. Sess. (Aug. 11, 2010).

26. See H.B. No. 4244.

27. *Id.* § 10. This Section provides:

SEC. 10. Family Planning Supplies as Essential Medicines. — Products and supplies for modern family planning methods shall be part of the National Drug Formulary and the same shall be included in the regular purchase of essential medicines and supplies of all national and local hospitals and other government health units.

Id.

28. An Act to Protect the Right of the People to Information about Reproductive Health Care Services, H.B. No. 1520, 15th Cong., 1st Reg. Sess. (July 19, 2010).

29. See H.B. No. 4244, § 10.

The National Drug Formulary is consistently defined as “a list of drugs prepared and periodically updated by the Department of Health on the basis of health conditions obtaining in the Philippines as well as on internationally accepted criteria.”³⁰ It is apparent that the National Drug Formulary is meant to inform the public of the drugs or medicines that are prioritized in Philippine health care. Clearly, an inspection of the current reproductive health data would show that Congress, by leaving the registration of “Family Planning Supplies” or “Modern Methods of Family Planning” to the government agencies connected with the National Drug Formulary, recognizes the level of expertise necessary to determine whether the same are medically safe.³¹ In fact, this particular proposal foresees a long-term usefulness: to list down “Family Planning Supplies” and “Modern Methods of Family Planning” in one law in order to limit the permissible supplies and methods only to those which are relevant, reinforcing the flexibility necessary to accommodate new scientific developments that would be beneficial to reproductive health rights. The methods presently contemplated by Congress can in fact be supplanted by better methods in the near future. Thus, inclusion in the National Drug Formulary would be more conducive to the protection of reproductive health rights.

According to the World Health Organization (WHO), “[e]ssential medicines are medicines that satisfy the priority health care needs of a population. They are selected with regard to disease prevalence, evidence of efficacy, safety, and comparative cost-effectiveness.”³² From this definition, it can be inferred that “priority health care needs” are subject to State determination and policy. Hence, conditions availing in one locality or country may be different from those of another.

30. An Act Providing for Cheaper and Quality Medicines, Amending for the Purpose Republic Act No. 8293 or the Intellectual Property Code, Republic Act no. 6675 or the Generics Act of 1988, and Republic Act No. 5921 or the Pharmacy Law, and for Other Purposes [Universally Accessible Cheaper and Quality Medicines Act of 2008], Republic Act No. 9502, § 4 (d) (2008). *See also* An Act Amending Republic Act No. 7875, Otherwise Known as “An Act Instituting a National Health Insurance Program for All Filipinos and Establishing The Philippine Health Insurance Corporation for the Purpose,” Republic Act No. 9241, § 1 (z) (2004). This Section provides that “[t]he essential drugs list for the Philippines which is prepared by the National Drug Committee of the Department of Health in Consultation with experts and specialists from organized profession medical societies, medical academe and the pharmaceutical industry, and which is updated every year.” *Id.*

31. *See* R.A. No. 9241 § 1 (z).

32. World Health Organization, Medicines: essential medicines, *available at* <http://www.who.int/mediacentre/factsheets/fs325/en/> (last accessed May 23, 2011).

It is submitted by the Author that there is no definitional obstacle, either legal or medical, that will prevent the categorization of “Family Planning Supplies” as essential medicines. In the first place, the terms “essential drugs” or “essential medicines” are not limited to instances of actual sicknesses or diseases that are to be treated or cured.³³ These terms can also be interpreted, and are being used, to address health concerns on a *preventive* level, that is, even before the onset of *actual* sicknesses or diseases.

Consistent with the definition of reproductive health rights, the designation of “Family Planning Supplies” as essential medicines will give men and women the enjoyment of “complete physical, mental[,] and social well-being ... in all matters relating to the reproductive system.”³⁴

V. FREEDOM OF CHOICE ON THE PART OF OBJECTORS

The assurance of freedom of choice in the context of RH Bills operates on two distinct but possibly clashing planes. The first freedom, on the part of the individual availing of either information or services involving “Family Planning Supplies” and “Modern Methods of Family Planning,” guarantees that the healthcare service provider, whether public or private, will deliver these to the individual under the pain of criminal prosecution.³⁵ The second freedom, on the part of the conscientious objector obligated to give either information or services involving “Family Planning Supplies” and “Modern Methods of Family Planning,” guarantees that his or her ethical or religious beliefs shall be respected, subject to the *referral* provision.³⁶ It can be said that in the enjoyment of these rights, something has to give in favor of one and to the disadvantage of the other. An inspection of the RH Bills, however, would show a tolerable balance between the two.

This referral provision obligates the conscientious objector to “immediately refer the person seeking such care and services to another healthcare service provider within the same facility or one which is conveniently accessible who is willing to provide the requisite information and services.”³⁷ It strikes a balance between the right of the healthcare service provider to object based on his or her ethical or religious beliefs³⁸ and his or her duty to do what is warranted by the profession, taking into

33. *Id.*

34. International Conference on Population and Development, Oct. 18, 1994, Cairo, Egypt, U.N. Doc. A/CONF.171/13 (1994).

35. H.B. No. 4244, § 28 (a).

36. *Id.* § 28 (a), ¶ 3.

37. *Id.*

38. *Id.* This Section provides that, “the conscientious objection of a healthcare service provider based on his/her ethical or religious beliefs shall be respected.”
Id.

consideration the mandate of the law to provide healthcare information and services to those in need of the same. Though this freedom is granted to the conscientious objector, it is not absolute. The referral provision, with respect to its last condition, imposes mandatory compliance when the person seeking the information or services is in an emergency condition or in a serious health case.³⁹

It is submitted that the referral provision gives the conscientious objector sufficient opportunity to exercise ethical and religious beliefs, subject to the condition that he or she does not endanger the reproductive health of the person seeking the information or services. Otherwise, a window to the blatant disregard of reproductive health rights will be opened on the ground of “ethical or religious freedom.” But assuming that the last condition of the referral provision infringes on the freedom of the conscientious objector, it is justified since it affects the right only to a minimal degree, and because the RH Bill mandates the last condition only with respect to emergency or serious cases.

Emergency refers to “a condition or state of a patient wherein based on the objective findings of a prudent medical officer on duty for the day there is immediate danger and where delay in initial support and treatment may cause loss of life or cause permanent disability to the patient.”⁴⁰ Serious case refers to “a condition of a patient characterized by gravity or danger wherein based on the objective findings of a prudent medical officer on duty for the day when left unattended to, may cause loss of life or cause permanent disability to the patient.”⁴¹ Both cases contemplate situations wherein time is of the essence in the extension of medical information or services,⁴² which might be incompatible with the referral provision above discussed.

It should be clarified at this point that *not all* instances of an individual availing of information or services involving reproductive health rights are

39. *Id.* This Section provides the condition that “[t]he person is not in an emergency condition or serious case as defined in R.A. 8344 otherwise known as ‘An Act Penalizing the Refusal of Hospitals and Medical Clinics to Administer Appropriate Initial Medical Treatment and Support in Emergency and Serious Cases.’” H.B. No. 4244, § 28 (a) ¶ 3.

40. An Act Penalizing the Refusal of Hospitals and Medical Clinics to Administer Appropriate Initial Medical Treatment and Support in Emergency or Serious Cases, Amending for the Purpose Batas Pambansa Bilang 702, Otherwise Known As “An Act Prohibiting the Demand of Deposits or Advance Payments for the Confinement or Treatment of Patients in Hospitals and Medical Clinics in Certain Cases,” Republic Act No. 8344, § 2 (a) (1998).

41. *Id.* § 2 (b).

42. See generally American College of Emergency Physicians, Is it an Emergency?, available at <http://www.emergencycareforyou.org/EmergencyManual/IsItAnEmergency/Default.aspx> (last accessed May 23, 2011).

emergency or serious cases. Consequently, it is only in a *few cases* where the referral provision cannot be invoked or resorted to by the conscientious objector. Considering the possible effects of referral in emergency or serious cases which might result in death or permanent disability, the referral provision obligates the conscientious objector to do what is required of him or her in the medical profession, since, this Author suggests, it is *improbable* that extending medical information or services to those in emergency or serious cases would actually be contrary to his or her ethical or religious beliefs.

VI. ALLOCATION AND DISBURSEMENT OF TAXPAYER'S MONEY

At this juncture, it is important to stress that the RH Bill is a means by which many practical benefits and public good can be brought down to the grassroots. It seeks to go down to the poor sector of Philippine society who are financially powerless to avail of commercially available healthcare benefits, such as products and services.⁴³ It seeks to reach those far-flung areas, those remote localities distant from the urbanized town and cities, which, more often than not, are still stuck in states of primitive or obsolete medical practices.⁴⁴ It needs to be repeated that Congress is not only addressing the lack of financial capacity of poor Filipinos; it is also trying to address the lack of proximity of poor Filipinos to quality healthcare services which are oftentimes centered in highly-urbanized areas.

To enable the initial implementation of the RH Bill, H.B. No. 4244, in Section 30, opted to allocate and utilize the “amounts appropriated in the current annual General Appropriations Act (GAA) for Family Health and Responsible Parenting under the [Department of Health] and the [Population Commission].”⁴⁵ But it is probable that this remaining sum of money may not be enough to get the RH Bill machinery running; thus, it is further provided that “[s]uch additional sums necessary to implement the [RH Bill],”⁴⁶ as well as to “provide for the upgrading of facilities necessary to meet Basic Emergency Obstetric Care and Comprehensive Emergency Obstetric Care standards[,] train and deploy skilled health providers[,] procure family planning supplies and commodities as provided in Sec. 6[.]

43. See H.B. No. 4244, § 15. This Section provides that a Mobile Health Care Service may be provided to each Congressional District which shall be used to deliver products and services to the “poor and needy.” *Id.* See also Nora O. Gamolo, Women’s groups urge church to consider ‘pro-poor’ RH Bill, *available at* <http://www.allvoices.com/contributed-news/8488471-womens-groups-urge-church-to-consider-propoor-rh-bill> (last accessed May 23, 2011).

44. See H.B. No. 4244, § 15.

45. H.B. No. 4244, § 30.

46. *Id.*

and implement other reproductive health services, shall be included in the subsequent GAA.”⁴⁷

To avoid a myopic perspective of the funding involved in the RH Bills, it is important to clarify that *funding is not solely given for the purchase and distribution of contraceptives*. As clearly stated in Section 30 of H.B. No. 4244, funding shall be, aside from the procurement of family planning supplies and commodities, allocated for (a) upgrading of facilities necessary to meet Basic Emergency and Obstetric Care and Comprehensive Emergency and Obstetric Care standards; (b) training and deploying skilled health providers; and (c) implementing other reproductive health services.⁴⁸

One of the accusations often thrown at the present RH Bill is the alleged “waste of taxpayers’ money” in the purchase of contraceptives and their subsequent distribution.⁴⁹ It is often argued that the money can always be spent on more substantial projects which will directly benefit the poor and the public in general.⁵⁰ This submission actually misses the point, since, as previously enumerated, the money substantially goes into the promotion of reproductive health rights.

To finally lay the erroneous arguments concerning the allocation of taxpayer’s money to rest, the Author maintains that the promotion of reproductive health rights is a commendable concern which warrants priority from the State, both in efforts to legislate and support from the nation’s coffers. By no stretch of logic can it be believed that the RH Bill proposals, in light of the problems concerning pregnancy and childbirth mortality rates and the prevalence of abortion in the Philippines, are wasteful and ineffective in remedying the social ills it seeks to address.

VII. CONCLUSION

Given all these considerations, the Author maintains that the discussed provisions of the RH Bills are not only necessary, but are some of the best possible solutions in addressing concerns such as maternal death, abortion, and even overpopulation and poverty. The efforts and resources that will soon be exerted to implement the provisions of the RH Bill can arguably be funneled into separate efforts to address individual concerns. However, the beauty of the RH Bill proposals is the fact that they are integrated into one document, one mechanism that links these solutions into a more efficient whole. While this Essay admits of the imperfections of the RH Bill, this fact

47. *Id.*

48. *Id.*

49. Zyann Amborsio, Forget RH bill, impeach Merci instead: bishop, *available at* <http://www.abs-cbnnews.com/nation/03/16/11/forget-rh-bill-impeachmerci-instead-bishop> (last accessed May 23, 2011).

50. *Id.*

does not take away anything from the good intentions by which it was drafted, or the possible benefits that this future law will have on Philippine society.