G.R. No. 179267 – JESUS C. GARCIA, *petitioner* versus THE HONORABLE RAY ALAN T. DRILON, Presiding Judge, Regional Trial Court, Branch 41, Bacolod City, and ROSALIE JAYPE-GARCIA, for herself and in behalf of her minor children, namely: JO-ANN, JOSEPH, EDUARD, and JESSE ANTHONE, all surnamed GARCIA, *respondents*.

Promulgated:

JUNE 25, 2013

CONCURRING OPINION

BRION, *J.*:

I concur with the *ponencia's* conclusion that Republic Act (*R.A.*) No. 9262 (*An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore and for Other Purposes*) is **constitutional** and **does not violate the equal protection clause**. As traditionally viewed, the constitutional provision of equal protection simply requires that similarly situated persons be treated in the same way. It does not connote identity of rights among individuals, nor does it require that every person is treated identically in all circumstances. It acts as a safeguard to ensure that State-drawn distinctions among persons are based on reasonable classifications and made pursuant to a proper governmental purpose. In short, statutory classifications are not unconstitutional when shown to be reasonable and made pursuant to a legitimate government objective.

In my view, Congress has presented a reasonable classification that focuses on women and children based on protective provisions that the Constitution itself provides. Section 11, Article II of the Constitution declares it a state policy to value the dignity of every human person and guarantees full respect for human rights. Further, under Section 14, Article II of the Constitution, the State recognizes the role of women in nation-building and ensures fundamental equality before the law of women and men. These policies are given purposeful meaning under Article XV of the Constitution on family, which states:

> Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.
>
> Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.
>
> Section 3. The State shall defend:

> (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
>
> (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development[.]

From the terms of the law, I find it plain that Congress enacted R.A. No. 9262 as a measure intended to strengthen the family. Congress found that domestic and other forms of violence against women and children contribute to the failure to unify and strengthen family ties, thereby impeding the State's mandate to actively promote the family's total development. Congress also found, as a reality, that women and children are more susceptible to domestic and other forms of violence due to, among others, the pervasive bias and prejudice against women and the stereotyping of roles within the family environment that traditionally exist in Philippine society. On this basis, Congress found it necessary to recognize the substantial distinction within the family between men, on the one hand, and women and children, on the other hand. ***This recognition, incidentally, is not the first to be made in the laws as our law on persons and family under the Civil Code also recognize, in various ways, the distinctions between men and women in the context of the family.***[1]

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[1] Examples of this distinction are found in the following provisions of the Family Code, as amended:

On the Ownership, Administrative, Enjoyment and Disposition of the Community Property:

"Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, **the husband's decision shall prevail,** subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision."

On the Liquidation of the Absolute Community Assets and Liabilities:

"Art. 102. Upon dissolution of the absolute community regime, the following procedure shall apply:

x x x x

(6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. **Children below the age of seven years are deemed to have chosen the mother**, unless the court has decided otherwise. In case there in no such majority, the court shall decide, taking into consideration **the best interests of said children**." (emphases ours)

On the Administration of the Conjugal Partnership Property:

"Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement**, the husband's decision shall prevail**, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision." (emphasis ours)

On the Liquidation of the Conjugal Partnership Assets and Liabilities:

"Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

x x x x

To be sure, Congress has not been alone in addressing violence committed against women and children as this move is "in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party."[2] The only question perhaps is whether the considerations made in these international instruments have reason or basis for recognition and active application in the Philippines.

I believe that the policy consideration Congress made in this regard is not without basis in history and in contemporary Philippine society so that Congress was acting well within its prerogative when it enacted R.A. No. 9262 "to protect *the family and its members* particularly women and children, from violence and threats to their personal safety and security."[3]

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(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. **Children below the age of seven years are deemed to have chosen the mother**, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration **the best interests of said children**." (emphases ours)

On Parental Authority:

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

x x x x

Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. **In case of disagreement, the father's decision shall prevail**, unless there is a judicial order to the contrary." (emphasis ours)

On the Effect of Parental Authority Upon the Persons of the Children:

"Art. 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
(2) To give them love and affection, advice and counsel, companionship and understanding;
(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
(4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
(5) To represent them in all matters affecting their interests;
(6) To demand from them respect and obedience;
(7) To impose discipline on them as may be required under the circumstances; and
(8) To perform such other duties as are imposed by law upon parents and guardians.

On the Effect of Parental Authority Upon the Property of the Children:

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, **the father's decision shall prevail**, unless there is a judicial order to the contrary."

[2] R.A. No. 9262, Section 2.

[3] Ibid; italics ours.

I consider, too, the statutory classification under R.A. No. 9262 to be valid, and that the ***lowest level of scrutiny of review*** should be applied in determining if the law has established a valid classification germane to the Constitution's objective to protect the family by protecting its women and children members. In my view, no need exists to further test the law's validity from the perspective of an ***expanded equal protection based on social justice***. The Constitution itself has made special mention of women and their role in society (Article II) and the assistance and protection that must be given to children irrespective of sex. It appears highly inconsistent to me under this situation if the Court would impose a strict level of scrutiny on government – the primary implementor of constitutional policies – and lay on it the burden of establishing the validity of an Act directly addressing violence against women and children.

My serious reservation on the use of an expanded equal protection clause and in applying a strict scrutiny standard is, among others, based on lack of necessity; we do not need these measures when we can fully examine R.A. No. 9262's constitutionality using the reasonableness test. The family is a unit, in fact a very basic one, and it cannot operate on an uneven standard where measures beyond what is necessary are extended to women and children as against the man – the head of the family and the family provider. The use of an expanded equal protection clause only stresses the concept of an uneven equality that cannot long stand in a unit living at close quarters in a situation of mutual dependency on one another. The reasonableness test, on the other hand, has been consistently applied to allow the courts to uphold State action as long as the action is found to be germane to the purpose of the law, in this case to support the unity and development of the family. ***If we are to deviate from or to modify this established standard of scrutiny, we must do so carefully and for strong justifiable reasons.***

If we are to use a strict level of scrutiny of government action, we must be aware of the risks that this system of review may open. A very real risk is ***to open the possibility that our social legislations will always be subject to heightened scrutiny***. Are we sure of what this approach entails for the government and for our society in the long run? How will this approach affect the social legislation that our society, particularly the most vulnerable members, need? What other effects will a system of review – that regards governmental action as illegal unless the government can actively justify the classifications it has made in the course of pursuing its actions – have? ***These are the questions that, in the long run, we have to contend with, and I hate to provide an answer through a case that is not, on its face and even in deeper reality, representative of the questions we are asking or need to ask.***

The cases of *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*[4] and *Serrano v. Gallant Maritime Services, Inc.*[5] demonstrate

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4 487 Phil. 531 (2004).

5 G.R. No. 167614, March 24, 2009, 582 SCRA 254.

the Court's application of a heightened sense of scrutiny on social legislations. In *Central Bank* and *Serrano*, we held that classifications in the law that result in prejudice to persons accorded special protection by the Constitution require a stricter judicial scrutiny.[6] In both cases, the question may well be asked: was there an absolute necessity for a strict scrutiny approach when, as in *Serrano*, the same result emerges when using the lowest level of scrutiny? In short, I ask if a strict scrutiny is needed under the circumstances of the present case as the Concurring Opinion of J. Roberto Abad suggests.

Not to be forgotten or glossed over in answering this question is the need to consider what a strict scrutiny requires, as well as the consequences of an expanded concept of equal protection clause and the accompanying use of a strict scrutiny standard. Among others, this approach affects the application of constitutional principles that we vigilantly adhere to in this jurisdiction.

I outline below what a strict scrutiny approach entails.

First, the use of strict scrutiny only applies when the challenged law or clause results in a "suspect classification";

Second, the use of a strict scrutiny standard of review creates a reverse *onus:* the ordinary presumption of constitutionality is reversed and the government carries the burden of proving that the challenged law or clause is constitutional;

And third, the reverse *onus* in a strict scrutiny standard of review directly strikes, in the most glaring manner, at the regularity of the performance of functions of a co-equal branch of government.

When the court uses a strict standard for review to evaluate the constitutionality of a law, it proceeds from the premise that the law established a "suspect classification." A suspect classification is one where distinctions are made based on the ***most invidious*** bases for classification that violate the most basic human rights, *i.e.,* on the basis of race, national origin, alien status, religious affiliation and, to a certain extent, sex and sexual orientation.[7] With a suspect classification, the most stringent scrutiny of the classification is applied: the ordinary presumption of constitutionality is reversed and the government carries the burden of proving the statute's constitutionality. This approach is unlike the lowest level of scrutiny (reasonableness test) that the Court has applied in the past where the classification is scrutinized and constitutionally upheld if found to be germane to the purpose of the law. Under a reasonableness test, there is a

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[6] See note 4. In *Central Bank*, the classification was based on salary grade or officer-employee status. In the words of the decision, "It is akin to a distinction based on economic class and status, with higher grades as recipients of a benefit specifically withheld from the lower grades" (p. 391).

[7] See note 5, at 321. Citing *City of Cleburn, Texas v. Cleburne Living Center*, 413 U.S. 432 (1985); *Loving v. Commonwealth of Virginia*, 388 U.S. 1 (1967).

presumption of constitutionality and that the laws enacted by Congress are presumed to fall within its constitutional powers.

To pass strict scrutiny, the government must actively show that the classification established in the law is justified by a compelling governmental interest and the means chosen by the State to effectuate its purpose must be narrowly tailored to the achievement of that goal.[8] In the context of the present case, is the resulting classification in the present law so outstandingly harmful to men in general so that a strict scrutiny is called for?

I do not really see any indication that Congress actually intended to classify women and children as a group against men, under the terms of R.A. No. 9262. Rather than a clear intent at classification, the **overriding intent of the law is indisputably to harmonize family relations and protect the family as a basic social institution.**[9] After sifting through the comprehensive information gathered, Congress found that domestic and other forms of violence against women and children impedes the harmony of the family and the personal growth and development of family members. In the process, Congress found that these types of violence must pointedly be addressed as they are more commonly experienced by women and children due to the unequal power relations of men and women in our society; Congress had removed these types of violence as they are impediments that block the harmonious development that it envisions for the family, of which men are important component members.

Even granting that a classification resulted in the law, I do not consider the classification of women and children to be within the "suspect classification" that jurisprudence has established. As I mentioned earlier, suspect classifications are distinctions based on the most invidious bases for classification that violate the most basic human rights. Some criteria used in determining suspect classifications are: (1) the group possesses an immutable and/or highly visible trait;[10] and (2) they are powerless to protect themselves *via* the political process.[11] The group is a "discrete" and "insular" minority.[12] Women and children, to my mind, simply do not fall within these criteria.

In my view, a suspect classification and the accompanying strict scrutiny should depend on the circumstances of the case, on the impact of the illegal differential treatment on the group involved, on the needed protection and the impact of recognizing a suspect classification on future classification.[13] A suspect classification label cannot solely and

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[8] *Grutter v. Bollinger*, 539 U.S. 306 (2003). See *Pamore v. Sidoti*, 466 U.S. 429,432 (1984); *Loving v. Commonwealth of Virginia*, *supra* note 7; and *Graham v. Richardson*, 403 U.S. 365, 375 (1971).

[9] Congressional Records, Vol. III, No. 51, January 14, 2004, pp. 141-147. See p. 25 of the *ponencia*.

[10] 477 U.S. 635 (1986).

[11] *United States v. Carolene Products Company*, 304 U.S. 144 (1938).

[12] *Frontiero v. Richardson*, 411 U.S. 677 (1973).

[13] *Concurring Opinion* in *Serrano v. Gallant Maritime Services, Inc.*, *supra* note 5, at 322.

automatically be triggered by the circumstance that women and children are accorded special protection by the Constitution. In fact, there is no place for a strict level of scrutiny when the Constitution itself has recognized the need for special protection; where such recognition has been made, congressional action should carry the presumption of validity.

Similarly, a suspect classification and the accompanying strict scrutiny standard cannot be solely based on the circumstance that the law has the effect of being "gender-specific." I believe that **the classification in the law was not immediately brought on by considerations of gender or sex; it was simply a reality as unavoidable as the reality that in Philippine society, a marriage is composed of a man, a woman and their children.** An obvious reason, of course, why the classification did not solely depend on gender is because the law also covers children, without regard to their sex or their sexual orientation.

Congress was sensitive to these realities and had to address the problem as it existed in order to pinpoint and remove the obstacles that lay along the way. With this appreciation of reality, Congress had no recourse but to identify domestic and other forms of violence committed on women and their children as among the obstacles that intrude on the development, peace and harmony of the family. From this perspective, the objective of the law – the productive development of the family as a whole and the Congress' view of what may be done in the area of violence – stand out.

Thus, *with the objective of promoting solidarity and the development of the family*, R.A. No. 9262 provides the legal redress for domestic violence that particularly affects women and their children. ***Significantly, the law does not deny, restrict or curtail civil and human rights of other persons falling outside the classification, particularly of the men members of the family who can avail of remedies provided by other laws to ensure the protection of their own rights and interests***. Consequently, the resulting classification under R.A. No. 9262 is not wholly intended and does not work an injustice by removing remedies that are available to men in violence committed against them. The law furthermore does not target men against women and children and is there simply to achieve a legitimate constitutional objective, and it does not achieve this by a particularly harmful classification that can be labeled "suspect" in the sense already established by jurisprudence. Under the circumstances, the use and application of strict scrutiny review, or even the use of an expanded equal protection perspective, strike me as both unnecessary and disproportionate.

As my final point, the level of review that the Court chooses to apply is crucial as it determines both the process and the outcome of a given case. The reverse *onus* that a strict scrutiny brings ignores the most basic presumption of constitutionality that the courts consistently adhere to when resolving issues of constitutionality. It also infringes on the regularity of

performance of functions of co-equal branches of government. As the Court pronounced in *Drilon v. Lim*:[14]

> In the exercise of this jurisdiction, lower courts are advised to act with the utmost circumspection, bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers. As the questioned act is usually the handiwork of the legislative or the executive departments, or both, it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.
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> It is also emphasized that every court, including this Court, is charged with the duty of a purposeful hesitation before declaring a law unconstitutional, on the theory that the measure was first carefully studied by the executive and the legislative departments and determined by them to be in accordance with the fundamental law before it was finally approved. To doubt is to sustain. The presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

Inter-government harmony and courtesy demand that we reserve the strict scrutiny standard of review to the worst possible cases of unacceptable classification, abject forms of discrimination, and the worst violations of the Constitution.[15] R.A. No. 9262 does not present such a case.

In these lights, I conclude that a valid classification exists to justify whatever differential treatment may exist in the law. **I vote to deny the petition and uphold the constitutionality of R.A. No. 9262 using the lowest level of scrutiny under the reasonableness test.**

ARTURO D. BRION
Associate Justice

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14 G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140; citation omitted.

15 *Concurring Opinion* in *Serrano v. Gallant Maritime Services, Inc.*, *supra* note 5, at 322.