

REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

THE DEPARTMENT OF  
HEALTH, represented by  
SECRETARY ENRIQUE T.  
ONA, and THE FOOD AND  
DRUG ADMINISTRATION,  
represented by DIRECTOR-  
GENERAL SUZETTE  
HENARES-LAZO,

G.R. No. 200431  
SCA Case No. 11-0013

*Petitioners,*

**-and-**

SENATOR PILAR JULIANA  
"PIA" S. CAYETANO and  
SENATOR FRANKLIN  
"FRANK" M. DRILON.

*Petitioners-Intervenors,*

**-versus-**

HONORABLE JUDGE  
ROMULO SG. VILLANUEVA in  
his official capacity as Presiding  
Judge of Branch 255, Regional  
Trial Court, Las Piñas City; and  
PHILIPPINE TOBACCO  
INSTITUTE, INC.,

*Respondents.*

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**MOTION FOR LEAVE TO INTERVENE**

Movants SENATOR PILAR JULIANA "PIA" S. CAYETANO,  
and SENATOR FRANKLIN "FRANK" M. DRILON, (hereafter,  
"Movants") by counsel, respectfully state:

## PREFATORY STATEMENT

“...when you strip it down to what matters, there is really only one thing anyone needs to know about tobacco. It kills people.”

- Arlene King

Chief Medical Officer of Health, Canada, 2010

Every twenty-five (25) minutes, a Filipino dies from tobacco use. Within the last decade alone, fifty million (50,000,000) people worldwide have been killed by it.<sup>1</sup> Tobacco use diminishes health throughout an individual's lifetime, and these effects accumulate throughout adulthood, resulting in preventable illness and, all too often, premature death.<sup>2</sup> In a joint report conducted by the Department of Health (hereafter, the “DOH”) and the World Health Organization (hereafter, the “WHO”), smoking kills approximately 240 Filipinos every day, and costs over P148 billion a year in economic losses due to illness and death.<sup>3</sup>

Indeed, tobacco-related addiction and disease constitute a global epidemic with serious consequences. However, despite these obvious health hazards, the tobacco industry has marketed and sold their lethal products with zeal, deception, a single-minded focus on financial success, and without regard for the human tragedy or social costs that such success has exacted.<sup>4</sup> Through creative and aggressive

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<sup>1</sup> Michael Eriksen, Judith Mackay and Hana Ross, *The Tobacco Atlas* Fourth Edition [hereinafter *The Tobacco Atlas*], Singapore (7), 2012.

<sup>2</sup> *The Tobacco Atlas*, 7.

<sup>3</sup> Manongdo, Jenny F., Smoking kills 87,600 Pinoys a year - DOH, Manila Bulletin Publishing Corporation, May 12, 2011, available at <http://www.mb.com.ph/articles/317932/smoking-kills-87600-pinoys-a-year-doh>.

<sup>4</sup> *The Tobacco Atlas*, 28, quoting US District Judge Gladys Kessler.

marketing and advertising, the tobacco industry is constantly able to conceal the harm and addictiveness of its products.

The Philippine government has the duty and the authority to curb the tobacco epidemic through a competent government agency - the Food and Drug Administration (hereafter, the “FDA”). Under Republic Act No. 9711, otherwise known as the Food and Drug Administration Act (hereafter, “FDA Act”), a law sponsored and co-authored by herein Movant Senator Cayetano, the FDA is given authority to regulate all products that may have an effect on health, including tobacco products which undeniably have an effect on health. During the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1652 and House Bill No. 3293<sup>5</sup>, the lawmakers acknowledged the broad power of the FDA to cover the health aspect of all products, and clarified that the FDA retains jurisdiction over tobacco products with regard to their health aspect. Movant Senator Cayetano, the Chairperson thereof, concluded with the statement that the **“FDA bill will be now in-charge of the health aspect. And in that sense, [it is] supplementary to whatever the mandate the special laws have on those products, but the health aspects (sic) is an FDA affair.”**<sup>6</sup>

Armed with their broad regulatory powers under the FDA Act and the entry into force of the World Health Organization Framework Convention on Tobacco Control (hereafter, the “WHO FCTC”), the DOH issued the Rules and Regulations Implementing the FDA Act (hereafter, the “FDA IRR”), paving the way for a more

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<sup>5</sup> Both with the title: “An Act Strengthening the Regulatory Capacity of the Bureau of Food and Drugs (now the Food and Drug Administration or FDA) by establishing adequate testing laboratories and field offices, upgrading its equipment, augmenting its human resource complement, giving authority to retain its income and for other purposes amending certain sections of Republic Act 3720, as amended and appropriating funds thereof”.

<sup>6</sup> The Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1652 and House Bill No. 3293 [hereinafter Bicameral Conference Committee], May 19, 2009.

robust FDA to effectively respond to the tobacco epidemic. Non-government organizations and concerned citizens celebrated the issuance of the FDA IRR.

Instead of complying with the celebrated public health measure, however, the tobacco industry lost no time in filing a lawsuit against the DOH and FDA, as it has consistently done so with progressive tobacco control measures aligned with the WHO FCTC.<sup>7</sup> In a surprising decision, the lower court ruled in favor of Respondent Philippine Tobacco Institute (hereafter, the “PTI”) and declared the FDA IRR void insofar as it regulates tobacco products and the tobacco industry.

The government’s failure to enforce, coupled with the tobacco industry’s refusal to comply with the FDA IRR, is not only an international embarrassment for the Philippines, but also makes a mockery of the institution of the FDA itself. The spread of the tobacco epidemic is a global problem with serious consequences on public health, which the Philippines effectively puts to naught for every single day that the FDA fails to regulate tobacco products and the tobacco industry.

## **PARTIES**

1. Movant Cayetano is an incumbent Senator of the 15<sup>th</sup> Congress of the Philippines, a Filipino citizen, of legal age, and may be served with notices and pertinent processes of this Honorable Court through the undersigned counsel at Room 505, Senate of the

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<sup>7</sup> World Health Organization, Framework Convention on Tobacco Control, Geneva, Switzerland, [hereinafter *WHO FCTC*], Article 9, May 21, 2003.

Philippines, GSIS Bldg., Financial Center, Roxas Boulevard, Pasay City.

2. Movant Drilon is an incumbent Senator of the 15<sup>th</sup> Congress of the Philippines, a Filipino citizen, of legal age, and may be served with notices and pertinent processes of this Honorable Court through the undersigned counsel at Room 525, Senate of the Philippines, GSIS Bldg., Financial Center, Roxas Boulevard, Pasay City.

### **FACTUAL ANTECEDENTS**

3. On August 18, 2009, the FDA Act was passed in order to strengthen the State's regulatory capacity and enforce compliance with regulations over health products. It created the office of the FDA under the DOH, tasked to assist in carrying out the provisions of the FDA Act. Together, the DOH and the FDA have full, plenary and exclusive jurisdiction over all products that may have an effect on a person's health.

4. On March 14, 2011, Health Secretary Enrique T. Ona announced the approval and issuance of the FDA IRR, paving the way for a more robust FDA. The FDA Act categorically states that the the FDA has full jurisdiction over the regulation of all health products, as determined by DOH. Thus, under Book II Article III of the FDA IRR, the DOH through FDA undertook to regulate tobacco and tobacco products, since the use of these products are scientifically proven to have injurious effects on health. The development of the regulatory authority of the Philippine FDA over tobacco products mirrors those of other countries with exemplary FDA bodies, such as Canada and the United States.

4.1 Canada has made more progress in tobacco control in recent years than other countries in the world. Its Food Directorate, for example, has successfully caused a dramatic decline of five percent (5%) in the smoking population through regular public consultations, survey monitoring, product labeling, and other measures.<sup>8</sup>

4.2 Similarly, in 2010, the US FDA enforced a comprehensive tobacco control strategy.<sup>9</sup> Other countries in turn have patterned their efforts after these models in the hopes of improving their health concerns.

5. Racing to block the government's move for stronger regulation of tobacco products, the PTI on June 30, 2011 filed a Petition for Declaratory Relief with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to prohibit the DOH and FDA from enforcing the FDA IRR, and to declare it null and void. PTI primarily alleges that the FDA IRR unduly covers tobacco products, purportedly contrary to the provisions of the FDA Act and Republic Act No. 9211, otherwise known as the Tobacco Regulation Act (hereafter, the "**RA 9211**").

6. On September 28, 2011, Branch 255 of the Regional Trial Court of Las Piñas (hereafter, the "**RTC**" or "**trial court**") denied PTI's prayer for the issuance of a writ of preliminary injunction for lack of merit.

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<sup>8</sup> Gardner, Amanda, FDA proposes graphic health warnings on cigarette packs, Bloomberg Businessweek, November 10, 2010, available at <http://www.businessweek.com/lifestyle/content/healthday/645759.html>.

<sup>9</sup> U.S. Food and Drug Administration, U.S. Department of Health and Human Services, last accessed May 23, 2012, available at <http://www.fda.gov/TobaccoProducts/default.htm>.

7. On January 27, 2012, the RTC rendered the assailed Decision, ruling in favor of PTI and declaring the FDA IRR void insofar as it regulates tobacco products and the tobacco industry. The DOH and FDA were directed to refrain from enforcing the FDA IRR provisions on tobacco products and the tobacco industry.

8. In its Decision, the trial court primarily relied upon: (1) PTI's interpretation of Section 25 of the FDA Act, and (2) the testimony of Atty. Emilio Polig, on the proper construction of the definition of "health products." The RTC held, thus:

x x x the clear language of Section 25 of R.A. No. 9711 states that tobacco products or "those covered by Republic Act No. 9211", are excluded from the coverage of R.A. No. 9711 and consequently, the regulatory authority of the FDA. With the exclusion of tobacco products from the jurisdiction of the FDA and the recognition of the Inter-Agency Committee-Tobacco's exclusive jurisdiction to regulate the same under R.A. No. 9211, it was highly irregular for the respondents (DOH and FDA) to include tobacco products under Article III of the IRR.

x x x

Furthermore, the literal application of Section 25 of R.A. No. 9711 will not result in absurdity and is in fact consistent with the present legal system governing tobacco regulation. Connected with Section 25 of R.A. No. 9711 is R.A. No. 9211, which is the primary law regulating tobacco products. Clearly R.A. No. 9711 did not include tobacco products because said products are already being regulated under R.A. No. 9211.

x x x

Also, this court notes x x x the Congressional deliberations relevant to the enactment of R.A. No. 9711, supports the recognition of the exclusive authority of the Inter-Agency Committee-Tobacco under R.A. No. 9211 to regulate tobacco products. (Emphasis supplied)

9. Movants submit that the trial court incorrectly relied on portions of the deliberations invoked by the PTI on the interpretation of Sec. 25 and Sec. 10(ff) of the FDA Act. After all, Movants are in the best position to shed light on what transpired during the deliberations, as well as the true intent of the law, since both were incumbent Senators during the time the FDA Act was being deliberated on, with Movant Senator Cayetano being a co-author of the FDA Act and the Chairperson of the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1652 and House Bill No. 3293 (hereafter, the “**Bicameral Conference Committee**” or “**Congressional Deliberations**”).

10. To date, the DOH and FDA have filed a Petition for Certiorari under Rule 65 of the Rules of Court with the Supreme Court, on the ground that the trial court judge acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Decision dated January 27, 2012, which case is still pending resolution.

## **DISCUSSION**

**Movants have a clear legal interest in the matter in litigation, i.e. the validity and enforcement of FDA IRR**

11. Movants, with Movant Senator Cayetano having served as Chairperson of the Bicameral Conference Committee, strongly object to the outrageous misreading and misinterpretation of the deliberations of the Bicameral Conference Committee that spearheaded the final drafting of the FDA Act. Senate Bill No. 1652 and House Bill No. 3293 address the lack of technical capability,

manpower and resources of the FDA, all of which hinders FDA to effectively perform its duties as a regulatory, licensing and monitoring agency.<sup>10</sup> These bills aimed primarily to strengthen the FDA by updating the regulations and prohibitions on the manufacture, tampering, labeling, importation, exportation, sale, distribution and transfer of health products.

12. Further, Movants, as ordinary citizens, represent and invoke the public's paramount interest and overriding right to life and health, which the DOH and FDA sought to protect when it issued the FDA IRR.

13. The legal interest required for intervention is present in this case. Section 1, Rule 19 of the Rules of Court provides:

Section 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.<sup>11</sup> (Emphasis supplied)

14. As concerned citizens, legislators, with Movant Senator Cayetano being the former Chairperson of Bicameral Conference Committee on Health and a co-author of the FDA Act, Movants have a personal and legal interest in the matter of the validity and

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<sup>10</sup> Senate Bill No. 1652, An act strengthening and rationalizing the regulatory capacity of the bureau of food and drugs (BFAD) by establishing adequate testing laboratories and field offices, upgrading its equipment, augmenting its human resource complement, giving authority to retain its income and for other purposes, amending certain sections of Republic Act No. 3720, as amended, and appropriating funds thereof, [hereinafter Senate Bill], 14th Congress, First Regular Session, Explanatory Note.

<sup>11</sup> Rules of Court of the Philippines, Rule 19, Sec. 1.

implementation of FDA IRR, and in the proper implementation and enforcement of the FDA Act, in accordance with the true intent of the legislature.

14.1 Movant Senator Cayetano was elected as Senator in 2004, running on a platform promoting health, education, environment, youth and women's empowerment. Consistent with her call to improve public health services, among others, she chaired the Senate Committee on Health and Demography, and pursued her advocacies on health and environment. On August 18, 2009, Movant Senator Cayetano sponsored and authored the FDA Act, which aims to (a) protect and promote the right to health of the Filipino people; and (b) help establish and maintain an effective health products regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems.<sup>12</sup>

14.2 Movant Senator Drilon was first elected as Senator in 2005 and has been strongly supportive of public health measures. He currently serves as a member of the Senate Committee on Health and Demography and has recently co-sponsored a bill, along with Movant Senator Cayetano, that requires picture health warnings on tobacco product packages. Movant Senator Drilon was instrumental in the passage of the 2012 law that restructured excise taxes on tobacco and alcohol, having led the reconciliation of the bills as then acting Chairman of the Ways and Means Committee.

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<sup>12</sup> Senate Bill, Sec. 3.

15. Movant Senator Cayetano also seeks to intervene in her official capacities as co-author of the law to shed light on the portions of the Congressional Deliberations dated February 23, 2009 and May 19, 2009, over which she acted as Chairperson of the proceedings. These deliberations have been invoked by both Petitioner PTI, and Respondents DOH and FDA in their respective pleadings, and moreover, quoted and relied upon by the trial court in its assailed Decision. However, Petitioner PTI misquoted and misrepresented the intent of Congress in adopting the FDA Act, thereby misleading the courts in order to serve its own interest.

16. It is urgent that herein Movants' intervention be granted in order that this misinterpretation can be corrected for the proper guidance of the Supreme Court in ruling upon the issues of this case. A reading of the complete records of the deliberations of Congress will reveal that the vision of the legislature and the spectrum of views declared at the time the law was being considered were anchored strongly in favor of protecting a greater interest - that of public health.

17. Further, as ordinary citizens, both Movants represent and invoke the public's paramount interest, and overriding right to life and health. These issues are intimately intertwined with the State's inherent and constitutional duty to protect and promote the right to health of the people and instill health consciousness among them.<sup>13</sup> This Honorable Court has repeatedly emphasized that the requirement of personal interest is satisfied by the mere fact that

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<sup>13</sup> 1987 Philippine Constitution, art II, § 15.

[Movant] is a citizen and, therefore, part of the general public, which possesses the right.<sup>14</sup> The following cases affirm this doctrine:

17.1 In 1989, Rodolfo Albano questioned the contract awarded by the Philippine Ports Authority's to the International Container Terminal Services, Inc. for the development, management and operation of the Manila International Container Terminal. The Supreme Court affirmed the legal standing of Albano as a citizen and a Member of Congress in view of public interest. The Court considered the "important role of the [Terminal] in the economic development of the country and the magnitude of the financial consideration involved."<sup>15</sup>

17.2 In 1998, Francisco Chavez filed a petition to compel the Presidential Commission on Good Government to disclose its transactions related to the recovery of ill-gotten Marcos wealth. The Supreme Court affirmed the legal standing of Chavez as a citizen and former solicitor general in view of his constitutional right to information and access to official records and documents.<sup>16</sup>

18. Thus, where matters of public right and interest are concerned, it is the people who are the real parties, and it is at least the right, if not the duty of every citizen to vindicate such public right and interest,<sup>17</sup> repeatedly respected by the Supreme Court. One of the

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<sup>14</sup> Francisco Chavez v. Presidential Commission on Good Government, G.R. No. 130716, December 9, 1998.

<sup>15</sup> Albano vs. Reyes, G.R. No. 83551, July 11, 1989.

<sup>16</sup> Francisco Chavez v. Presidential Commission on Good Government, G.R. No. 130716, December 9, 1998.

<sup>17</sup> De Castro v. Judicial Bar Council and President Gloria Macapagal Arroyo, G.R. No. 191002, March 17, 2010.

matters of public right and interest highly regarded is the right to health.

19. The right to health is enshrined in Article II, Section 15 of the Constitution, which enunciates the State Policy “to protect and promote the right to health of the people and instill health consciousness among them.” This fundamental right is further recognized under the International Bill of Human Rights, specifically Article 12.1 of the International Covenant on Economic, Social and Cultural Rights (hereafter, the “ICESCR”), as “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>18</sup> This right to health is not limited to access to health care and health care facilities but also includes a host of other factors that contribute to a healthy life, including healthy working and environmental conditions.<sup>19</sup>

20. Indeed, the enforcement of the FDA IRR with respect to the regulation of tobacco products is of paramount public interest, as it upholds the right to health of the people, and further strengthens the office of the FDA, being the country’s response to the mandate of Article XIII, Section 12 of the Constitution to establish and maintain an effective food and drug regulatory system and appropriate health, manpower development and research. Moreover, the FDA IRR was

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<sup>18</sup> WHO FCTC, Preamble provides:

Recalling Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which states that it is the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

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Recalling further that the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, provides that States Parties to that Convention recognize the right of the child to the enjoyment of the highest attainable standard of health...”

<sup>19</sup> The Office of the United Nations High Commissioner for Human Rights and the World Health Organization Factsheet No. 31 on The Right to Health (3).

issued in compliance with the Philippines' obligation under Article 5.3 of the WHO FCTC, General Comment No. 14 of the United Nations Committee on Economic, Social and Cultural Rights, and the Joint Memorandum Circular of the Civil Service Commission (hereafter, the "CSC") and the DOH (hereafter, the "**CSC-DOH Joint Memorandum Circular**").

20.1 The WHO FCTC is a full-fledged public health treaty, to which the Philippines is a State Party who signed and ratified the same in 2005, in accordance with the Constitution. The ratification of the WHO FCTC by the President and the concurrence of the Senate therewith "should be taken as a clear and unequivocal expression of our nation's consent to be bound by said treaty, with the concomitant duty to uphold the obligations and responsibilities embodied thereunder."<sup>20</sup> The WHO FCTC is one of the most widely embraced treaties in the history of the United Nations, having 176 Parties out of 195 eligible states in the world, with the recognition that the spread of the tobacco epidemic is a "global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries" and prompted by "the concern of the international community about the devastating worldwide health, social, economic, and environmental consequences of tobacco consumption and exposure to tobacco smoke."<sup>21</sup>

20.2 The United Nations Committee on Economic, Social and Cultural Rights declared that a State commits violations of its obligation to protect the right to health when it:

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<sup>20</sup> Bayan vs. Zamora, G.R. Nos. 138570, 138572, 138587, 138680, and 138698, 10 October 2000.

<sup>21</sup> WHO FCTC, Preamble.

- i. Fails to take necessary measures to safeguard persons from infringements of the right to health, including failure to regulate the activities of individuals, groups, or corporations and
- ii. Fails to discourage production, marketing and consumption of tobacco and other harmful substances.<sup>22</sup>

and further emphasized that health is a fundamental human right indispensable for the exercise of other human rights.

20.3 The CSC-DOH Joint Memorandum Circular, which embodies the principles of Article 5.3 of the WHO FCTC, (i) eliminates unnecessary interactions with the tobacco industry, and (ii) require the dissemination of information about the addictive and harmful nature of tobacco products, tobacco industry interference with tobacco control policies, and the true purpose and scope of activities described as “socially responsible”.<sup>23</sup> The CSC-DOH Joint Memorandum Circular strives to protect the public health policies and programs of the government from commercial and vested interests of the tobacco industry, shielding government health policies against tobacco industry interference. The issuance of the relevant portions of the FDA IRR with regard to protection against tobacco industry interference was in full compliance with this

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<sup>22</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 on “The right to the highest attainable standard of health (article 12 of the ICESCR).” last accessed June 1, 2012 available at [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En).

<sup>23</sup> Civil Service Commission and Department of Health Joint Memorandum Circular No. 01, s. 2010, Protection of the bureaucracy against tobacco industry interference, June 29, 2010.

memorandum and in accordance with the Philippines' treaty obligations under Article 5.3 of the WHO FCTC.

21. The public interest in protecting life and health present in this case is unquestionably lodged in the enforcement of the FDA IRR, which was issued in the performance of the constitutional mandate for an effective food and drug regulatory system, the obligations under WHO FCTC, as well as other international human rights treaties such as the ICESCR, and in compliance with the CSC-DOH Joint Memorandum Circular. The public is clearly interested in the implementation and enforcement of FDA IRR, and necessarily, in any matter that would go into the question of its validity.

**The instant case is one of transcendental importance and far-reaching implications, thus clothing Movants with sufficient legal interest to intervene.**

22. The Supreme Court has repeatedly recognized the legal standing of ordinary citizens when public interest is involved. The instant case is one of transcendental importance, as it involves a comprehensive governmental regulation issued by the DOH and FDA to combat the deadly tobacco epidemic in the Philippines. The tobacco epidemic is a public health issue which the State has the obligation to address. The transcendental importance of the instant case vests Movants with sufficient legal interest and personality to intervene in their capacity as ordinary citizens. The Supreme Court has repeatedly recognized the legal standing of ordinary citizens when public interest is involved, and especially in cases involving the paramount public interest, such as the instant case.

23. In the recent case of *De Castro v. Judicial Bar Council*,<sup>24</sup> the Supreme Court explained:

Quite often, as here, the petitioner in a public action sues as a citizen or taxpayer to gain locus standi. That is not surprising, for even if the issue may appear to concern only the public in general, such capacities nonetheless equip the petitioner with adequate interest to sue. In *David v. Macapagal-Arroyo*, the Court aptly explains why:

Case law in most jurisdictions now allows both “citizen” and “taxpayer” standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer’s suit is in a different category from the plaintiff in a citizen’s suit. In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern. As held by the New York Supreme Court in *People ex rel Case v. Collins*: “In matter of mere public right, however...the people are the real parties...It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied.” With respect to taxpayer’s suits, *Terr v. Jordan* held that “the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied.” (Emphasis supplied)

24. Article II, Section 15 of the 1987 Constitution clearly declares as a State policy the protection and promotion of people’s right to health. This is further supported by Article XIII, Sections 11 and 12 of the Constitution, which require an integrated and comprehensive approach to health development, and an established regulatory system responsive to the country’s health needs. This fundamental right to health is also recognized under the Universal Declaration of Human Rights as “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and the WHO FCTC.

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<sup>24</sup> G.R. No. 191002, 17 March 2010.

25. The enforcement of FDA IRR is thus clearly of paramount public interest, showing the Philippines' response to the constitutional mandate to promote the right to health and for an effective food and drug regulatory system, and to comply with the WHO FCTC, as well as other international human rights treaties such as the ICESCR, and the CSC-DOH Joint Memorandum Circular. In several cases, concerned citizens have been allowed by the Supreme Court to bring suits if the constitutional question they raise is of transcendental importance, and the rules on standing have often been realized in cases of transcendental importance and far-reaching implications. Thus, the Supreme Court has, in a number of cases, adopted a liberal policy allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.<sup>25</sup> The Supreme Court has held that cases of transcendental importance to the public must be settled promptly and definitely, brushing aside technicalities of procedure, such as when ordinary citizens and taxpayers are invoking only an indirect and general interest share in common with the public.<sup>26</sup>

26. The Courts have recognized the legal standing of citizens in similar public interest cases:

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<sup>25</sup> See *David v. Macapagai-Arroyo*, G.R. No. 171396, et seq., 3 May 2006, 489 SCRA 160; *Tanada v. Tuvera*, G.R. No. 63915, 24 April 1985, 136 SCRA 27 (1985); *Legaspi v. Civil Service Commission*, G.R. No. 72119, 29 May 1987, 150 SCRA 530 (1987); *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan, L.* No. 81311, 30 June 1988, 163 SCRA 371 (1988); *Albano v. Reyes*, G.R. No. 83551, 11 July 1989, 175 SCRA 264 (1989); *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 175 SCRA 343 (1989); *Gonzales v. Macaraig, Jr.*, G.R. No. 87636, 19 November 1990, 191 SCRA 452 (1990); *Maceda v. Macaraig, Jr.*, G.R. No. 88291, 31 May 1991, 197 SCRA 771 (1991); *Osmena v. Comelec*, G.R. Nos. 100318, 100308, 100417, 100420, 30 July 1991, 199 SCRA 750 (1991); *De Guia v. Comelec*, G.R. No. 104712, 6 May 1992, 208 SCRA 420 (1992); *Bagong Alyansang Makabayan v. Zamora*, G.R. Nos. 138570, 138572, 138587, 138680, 138698, 10 October 2000, 342 SCRA 449 (2000); *Lim v. Executive Secretary*, G.R. No. 151445, 11 April 2002, 380 SCRA 739 (2002); *Chavez v. Public Estates Authority*, G.R. No. 133250, 9 July 2002, 384 SCRA 152 (2002).

<sup>26</sup> *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989.

26.1 In 2007, people's organizations and non-governmental organizations engaged in public and civic causes aimed at protecting people's rights to self-governance and justice questioned the appointment and qualification of a Supreme Court Justice. They were recognized to have legal standing to file suit since "the matter involves an issue of utmost and far-reaching Constitutional importance."<sup>27</sup>

26.2 In 2008, a multitude of intervenors consisting taxpayers, legislators, local government units and organizations, sought to declare a Memorandum of Agreement on the Ancestral Domain negotiated between the government and the Moro Islamic Liberation Front void. The Supreme Court acknowledged that the constitutional issues raised, being of paramount public interest or of transcendental importance, deserve the attention in view of the seriousness, novelty and weight as precedents."<sup>28</sup>

26.3 In 2010, members of the House of Representatives assailed the constitutionality of Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act. Although the petitioners were not prejudiced as taxpayers or legislators, the Court resolved to uphold the legal standing of the petitioners "since the rule on standing can be relaxed for nontraditional plaintiffs like ordinary citizens, taxpayers, and legislators when as in this case the public interest so requires or the matter is of transcendental importance, of overarching significance to society, or of paramount public interest."<sup>29</sup>

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<sup>27</sup> Kilosbayan Foundation vs. Executive Secretary, G.R. No. 177721, July 3, 2007.

<sup>28</sup> The Province of North Cotabato vs. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. Nos. 183591, 183752, 183951, and 183962, October 14, 2008.

<sup>29</sup> Representatives Gerardo S. Espina, et al. vs. Zamora, G.R. No. 143855, September 21, 2010.

27. The objectives sought to be achieved by the FDA IRR deserve nothing less than the recognition of “transcendental importance” by the Supreme Court for certainly, the threats to health and lives of Filipinos due to tobacco use is an issue of “transcendental importance.” In fact, tobacco control is of such “over-arching significance to society” so much so that 176 out of 195 states in the international community have unified in a tobacco control initiative through the WHO FCTC.

28. The FDA is the primary administrative agency charged with regulating the health aspect of tobacco products. The government’s failure to enforce, coupled with the tobacco industry’s refusal to comply with the FDA IRR, creates international embarrassment for the Philippines, who is obliged to cooperate and participate for an effective, appropriate and comprehensive international response. The FDA IRR would have served as effective response to this call. However, the suit filed by the PTI effectively derailed the enforcement of the FDA IRR on tobacco control.

29. Any ruling that strips the DOH and FDA of the power to regulate the health aspect of tobacco products is detrimental to public health, and deals a major blow to the people’s right to life and health, in view of the deadly effects on health of tobacco products.

**It is in the best interest of the public that this Motion for Leave to Intervene be admitted, regardless of its being filed after judgment of the trial court.**

30. The Rules of Court provides that a motion to intervene “may be filed at any time before rendition of judgment by the trial court”. The permissive tenor of the provision shows the intention of the Rules to give to the court full discretion in permitting or disallowing the petition.

31. The Supreme Court has allowed intervention notwithstanding the rendition of judgment by the trial court, and even after a decision has become final and executory. The case of *Pinlac v. Court of Appeals* provides:

The rule on intervention, like all other rules of procedure is intended to make the powers of the Court fully and completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of the filing thereof. Indeed, in exceptional cases, the Court has allowed intervention notwithstanding the rendition of judgment by the trial court. In one case, intervention was allowed even when the petition for review of the assailed judgment was already submitted for decision in the Supreme Court. (Emphasis supplied).

32. Indeed, the purpose of the rules is to make the powers of the Court fully and completely available for justice. The purpose of procedure is not to thwart justice, but to facilitate and promote the administration of the same. It is in the best interest of the public that herein Movants intervene in their capacity as citizens, Senators, Chairpersons of the Bicameral Conference Committee on the Disagreeing Provisions of SBN 1652 and HBN 3293, in order to ensure the protection of public health.

33. All told, this case is of paramount public interest that calls no less than the highest court of the land to put a final end to the controversy.

34. This Motion is not intended to delay the proceedings but is filed solely for the reasons above-stated.

### **PRAYER**

**WHEREFORE**, premises considered, it is respectfully prayed that the Honorable Court grant Movants leave to intervene in the above-captioned case.

Other reliefs just and equitable under the premises are likewise prayed for.

Respectfully submitted.

Makati City for the City of Manila, 10 April 2013.