

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

EN BANC

CONGRESSMAN ANTONIO TINIO,
REPRESENTATIVE, ACT TEACHERS PARTY-
LIST, ET AL.,

Petitioners, G.R. No. 218123

- versus -

PRESIDENT BENIGNO SIMEON "NOYNOY"
C. AQUINO III, ET AL.

Respondents.

X ----- X
COUNCIL OF TEACHERS AND STAFF OF
COLLEGES AND UNIVERSITIES OF THE
PHILIPPINES, ET AL.,

Petitioners, G.R. No. 217752

- versus -

PRESIDENT BENIGNO SIMEON "NOYNOY"
C. AQUINO III, ET AL.

Respondents.

X ----- X
ANTONIO "SONNY" P. TRILLANES IV, ET AL.,

Petitioners,

- versus -

HON. PAQUITO N. OCHOA, JR., ET AL.

Respondents.

X ----- X
RICHARD TROY A. COLMENARES, ET AL.,

Petitioners,

- versus -

DEPARTMENT OF EDUCATION SECRETARY
ARMIN A. LUISTRO, ET AL.

Respondents.

X ----- X
MA. DOLORES M. BRILLANTES, ET AL.,

Petitioners,

- versus -

PRESIDENT BENIGNO SIMEON "NOYNOY"
C. AQUINO III, ET AL.

Respondents.

X ----- X

MEMORANDUM

Petitioners in G.R. No. 218123 (hereinafter, “Petitioners”), by counsel, file this Memorandum in compliance with the Honorable Court’s Resolution dated 5 April 2016, per Notice received on 13 April 2016.

PREFATORY

April 11, 2016, first day of enrolment for the Science, Technology, Engineering, and Mathematics (STEM) strand of senior high school (SHS) at the Polytechnic University of the Philippines (PUP). On that day alone, the League of Filipino Students (LFS) reported that at least 1,300 SHS-hopefuls were turned away by the one of the cheapest public schools in the country—all because they do not have vouchers from the Department of Education (DepEd), that is, they could not afford to continue their high school education.¹

“We regret to inform registrants from private schools,” says PUP’s cruel announcement, “that without the Certificate of Qualified Voucher Recipient (QVR), they will not be admitted to the PUPSHS. Instead, they are requested to pullout [sic] their documents from the Office of the SHS. Those coming from the provinces and are scheduled to enroll starting April 11, 2016 onwards, need not come. Please be guided accordingly.”²

These students are Grade 10 completers, most of them from the provinces, who were lucky enough to afford junior high school because of scholarships or relatively cheap tuition—but who are now unable to finish high school because their benefactors and parents can no longer cover the costs of the additional two years and, as the painful yet all-too-real Filipino saying goes, *pahirap na nang pahirap ang buhay*.

These students are joined by thousands of their peers who plan to enroll in the other SHS strands offered by PUP, and those who also cannot afford to pay for schooling in other schools with far more expensive tuition and other fees. They will add to the already unacceptable high school drop-out rate in our country, at around 400,000 to 500,000 per year.

These students are the target market of the booming business of private high school education led by the entry of private schools, technical

¹ *Thousands of PUP SHS applicants unable to enroll due to voucher system*, <http://www.lfs.ph/2016/04/13/thousands-of-pup-shs-applicants-unable-to-enroll-due-to-voucher-system/>

² Polytechnic University of the Philippines Senior High School (SHS) Announcement at <https://www.pup.edu.ph/iapply/seniorhs.aspx>

and vocational schools, and SUCs and LUCs like PUP offering SHS, which promote themselves as “K to 12 ready”—ready because of a combination of paltry public funding for education infrastructure, facilities, and other critical inputs and teaching and non-teaching personnel requirements on one hand and an aggressive public-private partnership program on education on the other.³

Those lucky enough to be retained in the public school system will be like human sardines crammed into classrooms intended for only a third of the entire class, or hold classes in spacious areas—literally under the santol tree, covered courts, or any “available spaces.” Some of them will enjoy their very own “stand-alone SHS”—one of mere 196 proposed for the whole country—or unknowingly displace younger children whose elementary and junior high schools were made victims of “conversion” for SHS.⁴ Half of them will be specializing in fields such as barbering, bartending, beauty and nail care, hairdressing, wellness massage, contact center, medical transcription, and automotive servicing.⁵

They will be taught by teachers who are not only overworked and underpaid, but are also insufficiently prepared in the new curriculum—DepEd’s ongoing Mass Training of Teachers is being held mere weeks before the school year opens, allotting a mere day for each subject, and in some Divisions, even less.⁶

These are merely a few facets of the current realities that result from the assailed K to 12 Program. With its dangerous combination of espousal of labor export policy and private provision of high school education, the K to 12 Law merely enables the decades-long abandonment of public

³ Sections 6, 7(a), 10, and 12 of R.A. No. 10533. Also, issuances such as DepEd Order 40, s. 2015 - *Guidelines on K to 12 Partnerships* at http://www.deped.gov.ph/sites/default/files/order/2015/DO_s2015_40.pdf, DepEd Memo 35, s. 2011 - *Strengthening the Public-Private Partnerships (PPP) In Education Through the Adopt-A-School Program (ASP)* at http://www.deped.gov.ph/sites/default/files/memo/2011/DM_s2011_035.pdf, DepEd Order 28, s. 2009 - *Guidelines in Accepting Information and Communication Technology (ICT) Equipment and Internet Access Services for Classroom Instruction and Administrative Use* at http://www.deped.gov.ph/sites/default/files/order/2009/DO_s2009_28.pdf, and DepEd Order 5, s. 2012 - *Creation of the Prequalification, Bids and Awards Committee (PBAC) and the Technical Working Group (TWG) for the Procurement Activities of the Public-Private Partnership for School Infrastructure Project (PSIP)* at http://www.deped.gov.ph/sites/default/files/order/2012/DO_s2012_05.pdf

⁴ Under Item A.3. of DepEd Order 51, s. 2015 - *Guidelines on the Implementation of the SHS Program in Existing Public JHSs and ISs, Establishment of Stand-Alone Public SHSs, and Conversion of Existing Public Elementary and JHSs Into Stand-Alone SHSs* at http://www.deped.gov.ph/sites/default/files/order/2015/DO_s2015_51_0.pdf.

⁵ Curriculum Guides in the Technology and Livelihood Education (TLE) and Technical-Vocational-Livelihood (TVL) Track at <http://www.deped.gov.ph/k-to-12/curriculum-guides/Technical-Vocational-Track>

⁶ DepEd Memorandum 133, s. 2015 - *Grade 5 National Training of Trainers (NTOT) and Mass Training of Teachers (MTOT) for the K to 12 Basic Education Program* at http://www.deped.gov.ph/sites/default/files/memo/2015/DM_s2015_133_0.pdf and DepEd Memorandum 42, s. 2016 - *Changes to DepEd Memorandum No. 133, s. 2015* at http://www.deped.gov.ph/sites/default/files/memo/2016/DM_s2016_042.pdf.

education and worsens the inaccessibility of the vast majority of Filipino children to quality education.

Petitioners plead with the Honorable Court to read R.A. No. 10533 and the Constitution in light of the historical realities reflecting the Philippine government's education policies and funding practice and the current social realities affecting Filipino families and the young generation. While the Constitution mandates the State to craft laws that will fully ensure the right to education, the right to labor, and a life free from poverty, among others, the assailed law takes advantage of the resource gaps in the education sector and lays it wide open for the private sector to enrich itself in, enables the worsening of contractualization of its workers, and shamelessly promotes labor export.

Such a law will kill the future of the Filipino children and the future of country—indeed, it has begun doing its job—and needs to be stricken down.

STATEMENT OF THE CASE

1. The Petition is a taxpayers' suit and concerned citizens' suit:
 - a. to strike down and declare as unconstitutional the K to 12 Law of the second Aquino administration and
 - b. to enjoin all the respondents from implementing the said unconstitutional law and to restrain them from any act relative thereto.
2. Petitioners seek the writs of certiorari and prohibition on the ground that Respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction⁷ when they legislated and implemented the K to 12 Law in utter disregard of the constitutional provisions on the right to education, labor, economy, and other related provisions.
3. As Respondents' actions are already causing and will cause grave injustice and irreparable violation of the Constitution and the Filipino people's rights, and given the transcendental importance of the case, Petitioners, as taxpayers and concerned citizens, seek the issuance of a restraining order and/or writ of injunction ordering the respondents to cease and desist from proceeding with the implementation of R.A. No.

⁷ Article VIII of the Constitution

10533 and from further threatening and performing acts that violate the Constitution.

4. Petitioners thus implore the Honorable Supreme Court to conduct a judicial review in accordance with Article VIII, Section 1 of the Constitution, as part of the government's system of checks and balances,⁸ particularly if the issue at stake concerns national interest and the sanctity of our Constitution.

5. With the ongoing railroaded and haphazard implementation of the unconstitutional K to 12 Law, and with the Chief Executive, Senate, and Congress, through their words and deeds obstinately refusing to heed the snowballing calls to stop if not suspend the implementation of the K to 12 Law, there is no plain, speedy and adequate remedy in the ordinary course of law for Petitioners but to avail themselves of the instant Petition pursuant to Sections 1 and 2 of Rule 65 of the Revised Rules of Court.

6. Furthermore, this suit is brought by petitioners as a class action under Section 12 of Rule 3 (in relation to Section 2 of Rule 17), on behalf of (1) all Filipino children—of the current generation and those yet to come—who will be forced to undergo a new yet unconstitutional educational structure, and choose between paying for more just to go on to senior high school or drop out of school altogether; (2) all parents who will have to spend more for just the basic education of their children; (3) tens of thousands of professors and tertiary-level non-teaching staff who will be displaced as result of a new general education curriculum (GEC) necessitated by RA 10533, and (4) all Filipino citizens who live under and abide by the 1987 Constitution, expecting of an education system that is designed to answer their aspirations and needs.

STATEMENT OF THE FACTS

7. On 29 May 2015, Petitioners filed a Petition for Certiorari and Prohibition with Prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction against Respondents, assailing the constitutionality of the K to 12 Law.

8. Some of the Petitioners are also petitioners in another K to 12-related case (G.R. No. 217451, *Dr. Bienvenido Lumbera, Pambansang Alagad ng Sining, et al. v. Pangulong Benigno Simeon C. Aquino III, at Punong Komisyoner ng Komisyon sa Lalong Mataas na Edukasyon/CHED Patricia Licuanan*) – filed on 15 April 2015. Assailed in G.R. No. 217451 is the constitutionality of CHED Memorandum (CMO) No. 20, series of 2013

⁸ *Dabuet v. Roche Pharmaceuticals*, 149 SCRA 386.

which abolished Filipino, Literatura/Panitikan and Philippine Government & Constitution subjects in college. On 22 April 2015, the Honorable Court issued a TRO effective immediately and continuing until further orders against CMO No. 20.

9. On 30 June 2015, the Supreme Court consolidated all anti-K to 12 Petitions including G.R. No. 218123 (*Congressman Antonio Tinio, Representative ACT Teachers Party-List, et al., v. President Benigno Simeon "Noynoy" C. Aquino III, et al.*), and ordered the Office of the Solicitor General (OSG) to file its comment within 10 days.

10. After several motions for extension, the OSG filed its Consolidated Comment on the K to 12 petitions on 30 October 2015.

11. Petitioners promptly filed their Reply to the OSG's Consolidated Comment on 10 December 2015.

12. The Honorable Court denied Petitioners' prayer for issuance of a TRO on 15 March 2016, more than a year after the first anti-K to 12 petition was filed in 2015.

13. In a Resolution dated 5 April 2016, the Honorable Court resolved to deny the motion to hear anti-K to 12 cases in oral arguments and gave due course on the petitions, treated the Comments as Answers and required Parties to submit their respective memoranda within a non-extendible period of 20 days from notice thereof.

14. Having received the Notice bearing said Resolution on 13 April 2016, Petitioners hereby submit this Memorandum in a timely manner.

STATEMENT OF THE FACTS

15. In 2011, Respondents Aquino and Luistro began implementing mandatory Kindergarten as the first stage of K to 12 Program. The *Kindergarten Education Act*,⁹ however, was only on 20 January 2012. The time-bending language of the law (speaking in a mandatory, future tense about a thing already done) was an indication that the Aquino government is bent on setting the education system up for restructuring even in the absence of a legal basis:

Section 4. *Institutionalization of Kindergarten Education.* - **Kindergarten education** is hereby institutionalized as part of basic education and **for school year 2011-2012 shall be implemented**

⁹ Republic Act 10157

partially, and thereafter, it **shall** be made mandatory and compulsory for entrance to Grade 1.¹⁰

16. Respondent President Aquino signed R.A. No. 10533 into law on 15 May 2013. Grade 7, however, was implemented beginning SY 2012-2013, a repeat of the case of Kindergarten.

17. Since then, DepEd and CHED started implementing the government's K to 12 Program, by adding two years of senior high school and trimming down the college General Education Curriculum (GEC).

18. Far from advocating national development, the second Aquino administration's K to 12 Program, legislated through Republic Act No. 10533,¹¹ will prioritize "global competitiveness," that is, the labor export policy. A survey of the curriculum guides for JHS and SHS particularly in the Technology and Livelihood Education (TLE) and Technical-Vocational-Livelihood (TVL) Track proves that the JHS and SHS curricula are aligned with foreign needs such as Caregiving, Food and Beverage Services, Housekeeping, Household Services, Welding, and Slaughtering Operation.¹²

19. The implementation of the K to 12 Law—crafted without massive democratic consultation with stakeholders—will also displace around 25,000¹³ to 78,000¹⁴ teachers and non-teaching staff, according to government statistics.

20. Furthermore, the K to 12 Law paves the way for the massive *de facto* privatization of senior high school education that will affect around 400,000 to 500,000 prospective senior high school students¹⁵ – who will be forced to enrol in private senior high schools because the government is not capable of establishing enough public senior high schools, thereby directly violating the constitutional provision on free secondary education.

21. On 28 June 2013, CHED released CMO No. 20, series of 2013,¹⁶ which states that it is

¹⁰ Emphasis supplied.

¹¹ "An Act Enhancing the Philippine Basic Education System by Strengthening its Curriculum and Increasing the Number of Years for Basic Education, Appropriating Funds Therefor and for Other Purposes" (Annex "A"). Hereinafter, RA 10533 or "K to 12 Law."

¹² <http://www.deped.gov.ph/k-to-12/curriculum-guides/Technical-Vocational-Track>. Also, Annex "B" in the Petition ("Table of In-Demand Skills and/or Professions in 10 Top Destinations of OFWs Vis-a-vis Senior High School Courses in the Philippines")

¹³ Slide 41 of the *K to 12 Basic Education Program Midterm Report* (Annex "C" in the Petition).

¹⁴ Annex "D" in the Petition. <http://www.rappler.com/nation/84320-worst-case-scenario-k-12-displacements>

¹⁵ Slide 23 of Annex "C.". Presented to both Houses of Congress on 11 March 2015 and 5 May 2015.

¹⁶ Annex "Y" ("CMO No. 20, Series of 2013")

“[i]n the pursuit of the ongoing educational reforms that include the enhanced basic education curriculum through K to 12 which x x x has integrated GE courses of higher education programs in the senior high school courses thus, has created a window for the revision of the current GE curriculum.”

22. Said CMO thus trimmed down the GEC by abolishing subjects such as Filipino, Panitikan/Literature, and Philippine Government & Constitution, and imposed of the following core courses at the tertiary level:

- i. Understanding the Self;
- ii. Readings in Philippine History;
- iii. The Contemporary World;
- iv. Mathematics in the Modern World;
- v. Purposive Communication;
- vi. Art Appreciation;
- vii. Science, Technology and Society; and
- viii. Ethics.

23. Said CMO also made merely voluntary the use of Filipino as medium of instruction.¹⁷

24. As the said CMO contained no Filipino subjects, Filipino teachers and advocates of the national language established the *Alyansa ng Mga Tagapagtanggol ng Wikang Filipino* (Alliance of Defenders of the Filipino Language, TANGGOL WIKA) in a forum at DLSU Manila (DLSU-Manila) on 21 June 2014 to oppose the implementation of CMO No. 20. Around 300 teachers, researchers, students, and citizens from 40 colleges, universities, and cultural organizations participated in the said founding-assembly.¹⁸

25. Meanwhile, in junior high school, Philippine History was abolished.¹⁹ In senior high school, Philippine History is also erased from the curriculum,²⁰ further exposing the K to 12 curriculum’s anti-nationalist inclinations.

26. Realizing that CMO No. 20 is merely part of the K to 12 Program, and cognizant of other serious concerns related to K to 12, around 500 teachers, students, employees, and citizens from various institutions and organizations such as the Alliance of Concerned Teachers-Philippines, ACT

¹⁷ Section 3 of Annex “Y.” (“CMO No. 20, Series of 2013”)

¹⁸ Annex “Z” <http://www.rappler.com/nation/61234-tanggol-wika-general-education-college>

¹⁹ The curriculum guide for Grades 7 to 10 (junior high school) in Social Science is too voluminous to be attached as an annex. Pertinent parts can be found on pages 66 to 120 of this curriculum guide:

<http://www.deped.gov.ph/sites/default/files/Araling%20Panlipunan%20Grades%20%201-10%2001.17.2014%20edited%20March%2025%202014.pdf>

²⁰ <http://www.deped.gov.ph/k-to-12/About/curriculum-guides/Core-SHS>

Teachers Party-List, Quezon City Public School Teachers' Association (QCPSTA), Arellano University, University of the Philippines (UP) Academic Employees' Union, Adamson University, De La Salle University, University of Santo Tomas, National Teachers' College, Polytechnic University of the Philippines, Binangonan and Antipolo Teachers' Federation, Technological University of the Philippines, Alliance of Concerned Teachers-State Universities and Colleges (ACT-SUC), and Alliance of Concerned Teachers-Private Schools (ACT-Private Schools), established the Suspend K to 12 Alliance in a forum held at the National Teachers' College in Manila, on 16 August 2014.

27. The member individuals and organizations of the Suspend K to 12 Alliance explain in ten points their analyses in their Declaration of Unity.²¹

28. Since then, Petitioners through the Suspend K to 12 Alliance and its affiliates, held fora, rallies, and other activities,²² to publicize calls for the suspension of the implementation or the scrapping of R.A. No. 10533. Such moves have also been widely disseminated through media reports.²³

29. Aside from the Makabayan bloc in Congress (composed of the seven Petitioner-Party-List Representatives) who argued against the K to 12 Law— Senator Antonio Trillanes IV and Rep. Leyte Ferdinand Martin Romualdez have been calling for the suspension of the K to 12 Program.

30. Respondents railroaded the implementation of K to 12, as seen in DepEd's latest Physical Report of Operation²⁴ which shows the construction and procurement of classrooms and facilities for SHS, the lack of new non-teaching and teaching related items, the zero physical accomplishment rates in the budgets for textbook, instructional materials, science and mathematics equipment, and ICT packages. It is also evident in the rushed and insufficient training of teachers for the new curriculum, the latest of which is the Mass Training of Teachers in Grades 5 and 10.²⁵

31. The dismal physical accomplishment rates in this latest Physical Report of Operation is merely a repeat of previous Physical Reports in the

²¹ Annex "X" ("10 Reasons Why K to 12 Should Be Suspended")

https://www.academia.edu/11365837/10_Reasons_Why_K_to_12_Should_Be_Suspended

²² Annex "F" ("List of Suspend K to 12 Alliance Forums, Rallies, Dialogues Etc.")

²³ Annexes "G" to "U" ("Various News Articles on Suspend K to 12 Alliance Activities")

²⁴ Physical Report of Operation as of September 30, 2015 at

http://www.deped.gov.ph/sites/default/files/page/2015/2015%20DEPED%20Physical%20Plan%20BAR%201Part%20B_2015Q3%20%28as%20of%20September%202015%29.pdf. Also, Annex "V" of the Petition.

²⁵ DepEd Memorandum 133, s. 2015 - *Grade 5 National Training of Trainers (NTOT) and Mass Training of Teachers (MTOT) for the K to 12 Basic Education Program* at

http://www.deped.gov.ph/sites/default/files/memo/2015/DM_s2015_133_0.pdf and DepEd

Memorandum 42, s. 2016 - *Changes to DepEd Memorandum No. 133, s. 2015* at

http://www.deped.gov.ph/sites/default/files/memo/2016/DM_s2016_042.pdf.

years before the K to 12 Law—when government should have started laying the groundwork for the additional requirements of K to 12 reforms—and in the years after.

32. In a Senate hearing on 5 May 2015, DepEd and CHED presented the “K to 12 Basic Education Program Midterm Report”²⁶ and the “Penultimate Report”²⁷ of the Inter-Agency Technical Working Group of the Department of Education, Department of Labor and the Technical Skills and Development Authority” dated 30 April 2015.

33. Continuing its historical errors, government has failed to provide for the physical and personnel requirements for K to 12. From the number of SHSs alone, it appears that the private provision of high school is fast outpacing public provision. As per the DepEd’s latest statistics,²⁸ 5,927 public schools, 35 LUCs, 78 SUCs, and 4,642 private schools will offer senior high school programs. The last three—termed as “non-DepEd schools”—essentially operate as private schools, that is, they charge tuition and other fees, even the SUCs and LUCs. This means that there is nearly a 1:1 ratio between public and private SHSs in the country.

34. More children are also forced to go to private schools: With 7,748 public JHSs, students of at least 1,821 of these will have to transfer to private schools which charge tuition and other fees beyond the maximum amount of government vouchers.

35. One of the ways which DepEd compensates for the shortage of public SHSs is via “conversion” of several existing elementary and junior high schools into stand-alone SHSs,²⁹ which essentially displaces the elementary and high school students to other schools, thus leading to bloated populations in those schools, so that these schools’ rooms, laboratories, and facilities will be used for SHS.

36. Another way is through the voucher program. The “K to 12 Basic Education Program Midterm Report” admits that only 800,000 to 1.1 million Grade 10 completers from public JHSs (out of the 1.2 million to 1.6 million) will be accommodated in public SHSs considering current and planned resources will be accommodated by public schools. The remainder—up to half a million in just SY 2016-2017—will have to enrol in private schools via a voucher system which subsidizes private education,

²⁶ Annex “C” DepEd’s “K to 12 Basic Education Program Midterm Report” (May 5, 2015)

²⁷ Annex “D”

²⁸ <http://www.deped.gov.ph/k-to-12/shs>

²⁹ Under Item A.3. of DepEd Order 51, s. 2015 - *Guidelines on the Implementation of the SHS Program in Existing Public JHSs and ISs, Establishment of Stand-Alone Public SHSs, and Conversion of Existing Public Elementary and JHSs Into Stand-Alone SHSs* at

http://www.deped.gov.ph/sites/default/files/order/2015/DO_s2015_51_0.pdf

instead of expanding public education. Using the case of PUP as benchmark for the national situation, Filipino children are being denied access to education at a rate of at least 1,300 of these students per day *in just one school*, their chance to finish high school gone.

37. Students who enrol in non-DepEd SHSs will only receive P8,750 to P22,500 pesos of annual subsidy, whereas annual tuition rates for private SHSs range from P24,850 pesos (advertised rate of APEC Schools, a consortium of the Ayala clan and multinational for-profit corporation giant Pearson Education) to P32,500 pesos (rate in the STI chain) and P70,000 pesos (rate in the Philippine subsidiary of Singapore-listed Informatics Group, another for-profit entity). Thus, on top of incidental expenses, students and/or their parents will have to shell out money beyond the inadequate government subsidy.

38. Whereas students and their parents stand to lose in the K to 12 Program, private senior high school education is fast becoming a booming business in the aftermath. It is not surprising that the Ayalas co-founded and still co-lead the National Industry-Academe Council (NIAC) which “threw their weight behind the shift to the K to 12 basic education system”³⁰ in the same year the APEC Schools chain was founded. Interestingly, a top official of the ruling Liberal Party that shepherded the legislation of K to 12 in the Philippines, also served as an Ayala Corporation consultant in 2013 when the K to 12 Law was passed.³¹ She joined the ranks of the main proponents of the K to 12 Law who have vested rights in the private sector in education.³²

39. Aside from Pearson, Informatics Group, and Ayala Corporation, other listed, for-profit firms engaged in senior high schools are PHINMA, Centro Escolar University/CEU, iPeople (part of the Yuchengco Group of Companies that controls Mapua Institute of Technology and Malayan High School of Science, both senior high school-offering entities), ANSCOR (that partly owns Enderun Colleges which also offers senior high school), Far Eastern University and STI, based on Department of Education online statistics and online data from the Philippine Stock Exchange. Another big private investor in senior high school education is the AMA Group which owns a large chain of schools composed of AMA, ABE and St. Augustine Schools. In its website, the AMA Basic Education Unit directly invites would-be investors by boasting that the firm “is open for franchising.”³³ For 2016,

³⁰ <http://newsinfo.inquirer.net/643342/business-academe-back-k-12>

³¹ <https://ph.linkedin.com/in/victoria-garchitorena-0144048>

³² One of the main proponents of the K to 12 Law, A TEACHER Party-List, is represented in Congress by Reps. Mariano Piamonte and Julieta Cortuna, who were officials of Coordinating Council of Private Educational Associations and Catholic Educators Association of the Philippines, both umbrella organizations of private school owners.

³³ <http://www.sais.edu.ph/>

private SHSs stand to gain P11.183 billion pesos as assistance from the national government, on top of 1 billion pesos for students' vouchers.³⁴

40. Petitioners attest that they have received reports of the numerous disastrous effects of the K to 12 Program, including the one-subject-a-day training for Grade 5 and Grade 10 teachers, the forced assignment without compensation and training of SHS teaching loads to JHS teachers, the loss of jobs and benefits of college teachers and non-teaching personnel, the displacement *en masse* of students of converted elementary and junior high schools, among others.

STATEMENT OF THE ISSUES

41. Petitioners have consistently raised the following issues in their Petition:

- I. **REPUBLIC ACT 10533 AND THE K TO 12 PROGRAM ARE UNCONSTITUTIONAL AS THEY VIOLATE CONSTITUTIONAL PROVISIONS ON THE RIGHT TO EDUCATION, AS WELL AS PROVISIONS ON LABOR, ECONOMY, AND OTHER RELATED PROVISIONS**
 - i. **RA 10533 and the K to 12 Program violate the right to quality education at all levels and the right to free secondary education enshrined in Article XIV, Sections 1 and Section 2 (2) of the 1987 Constitution.**
 - ii. **RA 10533 and the K to 12 Program violate the right to select a profession or course of study, enshrined in Article XIV, Section 5 (3) of the 1987 Constitution.**
 - iii. **RA 10533 and the K to 12 Program violate provisions on the nationalist character of education—one mandated to promote in the youth patriotism and nationalism, geared towards national development, and is relevant to the needs of the Filipino people—enshrined in Article II, Sections 13 and 17; and Article XIV, Sections 2 (1) and 3 (2) of the 1987 Constitution.**
 - iv. **RA 10533 and the K to 12 Program violate provisions on the State's duty to promote a just and dynamic social order, a self-reliant and independent national**

³⁴ Special Provisions to the DepEd budget in the 2016 General Appropriations Act. Also, <http://www.mb.com.ph/deped-prepares-complete-implementation-of-k-to-12/>

economy, comprehensive rural development and agrarian reform, and industrialization and full employment, enshrined in Article II, Sections 9, 19 and 21, and Article XII, Section 1.

- v. RA 10533 and the K to 12 Program violate provisions on the supervision, control and administration of educational institutions, enshrined in Article XIV, Section 4 (1) and (2).
- vi. RA 10533 and the K to 12 Program violate the constitutional provision on the State's full protection for labor, and the right of workers to participate in policy and decision-making with regard to their situation, and other related provisions enshrined in Article XIII, Section 3 of the 1987 Constitution.
- vii. RA 10533 and the K to 12 Program violate the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making, enshrined in Article XIII, Sections 15 and 16 of the 1987 Constitution.
- viii. RA 10533 and the K to 12 Program violate the provisions on the State's duty to consider the rights of indigenous cultural communities in the formulation of national plans and policies enshrined in Article XIV, Section 17 of the 1987 Constitution.
- ix. RA 10533 and the K to 12 Program violate the provisions on the State's duty to provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills, enshrined in Article XIV, Section 2 (5) of the 1987 Constitution.
- x. RA 10533 and the K to 12 Program violate linguistic, cultural, and educational provisions, enshrined in Article XIV, Sections 3 (1), 6, 7, 14, 15, 17, 18 (1) & 18 (2) of the 1987 Constitution.

II. THE IMPLEMENTATION OF RA 10533 GOES AGAINST THE FILIPINO PEOPLE'S WELFARE.

ARGUMENTS

I. REPUBLIC ACT 10533 AND THE K TO 12 PROGRAM ARE UNCONSTITUTIONAL AS THEY VIOLATE CONSTITUTIONAL PROVISIONS ON THE RIGHT TO EDUCATION, AS WELL AS PROVISIONS ON LABOR, ECONOMY, AND OTHER RELATED PROVISIONS

RA 10533 and K to 12—through the voucher system in SHS—violate the right to quality education at all levels and the right to free secondary education enshrined in Article XIV, Sections 1 and Section 2 (2) of the 1987 Constitution

42. The Philippine Constitution explicitly says that all Filipino citizens have the right to quality education at all levels, a right which the State is duty-bound to protect:

Article XIV, Section 1. The State shall protect and promote the **right of all citizens to quality education at all levels**, and shall take appropriate steps to **make such education accessible to all**.

43. The aforementioned constitutional provision clearly implies that the Philippine government is obliged to implement only an education system that will provide **quality education for all**.

44. Hence, with regard to the current case, it must be determined if R.A. No. 10533 and the curriculum that it imposes will provide quality education for all.

45. Regardless of a detailed discussion on the current quality of education in the Philippines, the issue of access can be highlighted, especially that it is among the identified millennium development goals (MDGs) of the United Nations, and considering that the Philippine Constitution explicitly specifies the right to **free** primary and secondary education:

Article XIV, Section 2. The State shall:

x x x

(2) Establish and maintain a system of **free public education in the elementary and high school levels**. x x x

46. **Private provision of junior and senior high school is intricately and inseparably woven into the K to 12 Program.** Petitioners urge this Honorable Court to view R.A. No. 10053 within the context of Philippine realities, historical, current, and prospective:

Section 10. Expansion of E-GASTPE Beneficiaries. — The benefits accorded by Republic Act No. 8545, or the “Expanded Government Assistance to Students and Teachers in Private Education Act,” shall be extended to qualified students enrolled under the enhanced basic education.

The DepED shall engage the services of private education institutions and non-DepED schools offering senior high school through the programs under Republic Act No. 8545, and other financial arrangements formulated by the DepED and the Department of Budget and Management (DBM) based on the principles of public-private partnership.

47. R.A. No. 10533 violates the Constitution by replacing free public senior high school education with **subsidized private education for at least 1 million students just in the first two years of the implementation of SHS (2016 and 2017).**

48. **Historical realities: The Philippine government has never funded basic education with at least 6% of the Gross Domestic Product—the international standard of education funding for developing countries—appropriating only an average of around 2% for public elementary and high schools.** Costs of education rose, making education too exorbitant for majority of our youth, and Philippine children as a result either do not go to school or drop out. The Net Enrolment Rates (NER) from 2010 to 2014 reveal that less than three-quarters of Filipino children who go to school are overaged.³⁵ Data further back point to a worse NER, with past administrations funding education with less than 2% of GDP.

49. **Current realities: Education spending has indeed risen with the current administration, but that is only because we have come from decades when basic education was severely starved of funding. It is true also because the past administrations have included in the national budget subsidies that benefit the private sector** in the form of (1) public-private partnership contracts for infrastructure and other facilities and (2) GASTPE (later on, E-GASTPE), with these items dwarfing direct funding to public schools like operational costs, and those for programs like pre-service teacher training, employee development, and others.

50. **Despite this increased spending and due to the bias to fund the private sector in education, basic education still is starved for sufficient funding.** Enrolment has indeed shot up, with the recent implementation of mandatory Kindergarten and the active efforts to enrol out-of-school

³⁵ Slide 4, Annex “C”

youths. By themselves, these two are positive developments, but coupled with inadequate funding, they spell disaster—extreme shortages in schools, classrooms, textbooks, and other facilities, also of teachers and non-teaching staff, and eventually, drop-outs.

51. Respondents, especially President Aquino from whom the annual budget process begins and ends, did not appropriate sufficient funds in preparation for K to 12, even, at the very least, for two years prior to the introduction of the three new grade levels—for the creation of junior and senior high schools to cure the shortage in high schools³⁶ and to match the expected enrolment, for classroom construction, for the creation of sufficient teaching and non-teaching positions, and others.

52. Prospects: Respondents’ plans—revealed in their midterm reports, periodic updates of several agencies, and public statements—do not include a correction of this inhumane habit of depriving public education of necessary funding. For instance, in 2016 alone, at least 400,000 to 500,000 prospective senior high school students who cannot be accommodated by public senior high schools offering Grade 11 (because planned school and classroom construction will not be able to meet the entire demand) are expected to “transfer to Non-DepEd SHS”—in other words, private high schools.³⁷

53. For 2017, another 400,000 to 500,000 Grade 11 students will be forced to enrol in private schools. Add these to the new Grade 12 students described in the preceeding paragraph, and we have at most a million students pushed by government towards a more expensive—that is, not free—education. These figures are expected to increase in subsequent years.

54. Petitioners cannot stress this more strongly—Leaving children at the hands of private schools is not the “free education” that the Constitution is talking about.

55. Respondents answer this argument by waving the E-GASTPE, or the SHS voucher system, flag.³⁸ Vouchers will answer for the tuition fees (only, and not the other, taller fees) of the students who “cannot be accommodated” in public schools. A maximum of P22,500 can be had, and an estimated government spending per learner of P18,300, but suffice it to

³⁶ As of 2011 DepEd figures, there are 38,351 public elementary schools but only only 7,268 public high schools throughout the country. This makes a ratio of only one public high school for every five elementary schools, (1) with high schools found mainly in urban areas and population centers only and (2) 91% of school-age children are enrolled in elementary, while only 62% are enrolled in high school.

³⁷ Annex “C” (p.33)

³⁸ Slides 31 to 33, Annex “C”

say that neither amount can cover the full expenses of education in private schools.

56. The vouchers that DepEd will provide are not enough to cover tuition and other fees in many private schools that have been authorized by DepEd to offer senior high school programs and accept students from public junior high schools, such as the Technological Institute of the Philippines, where annual tuition fee amounts to P30,000 to P35,000 pesos; Informatics, amounting to P70,000 pesos; STI, P32,500; New Era University, P30,000; National College of Business and Arts, P25,000 – 30,000 pesos; and APEC Schools, P24,850 pesos. Even those advertised as “no top-up,” prospective enrollees will be slapped with energy, lab, computer, textbook, school service, and other such fees which will not be covered by the vouchers.³⁹

57. It is worth mentioning that STI Education Systems Holdings Inc. (with a gross revenue of 2,207,355,900 pesos in 2014),⁴⁰ Informatics Holdings Philippines, Inc. – a subsidiary of the multinational firm Informatics Group (with a revenue of 23.8 million Singaporean dollars),⁴¹ Ayala Corporation (with a gross revenue of 184,275,564 pesos in 2014)⁴² – which established APEC Schools with the UK-based Pearson⁴³ (with cash generated in operations of 704 million British pounds in 2014),⁴⁴ are all profit-oriented entities that are among DepEd’s partners in implementing RA 10533’s voucher system.

58. Petitioners note that aside from the voucher system’s violation of the right to free secondary education is the fact that such system has in fact failed in the United States of America and Sweden, leading to massive privatization of the education system, defunding of public schools, and general decline in the quality of education.⁴⁵

59. Hence, it is very clear that the *de facto* privatization of senior high school education via R.A. No. 10533’s voucher system—with the seemingly-harmless label of “public-private” partnership—is a direct violation of the constitutional provision that mandates **FREE** secondary education which of course must cover senior high school. Under such scheme, the DepEd has issued permits in 2014 for 333 tuition-charging non-DepEd schools to offer senior high school, while 1,866 such schools have been granted permits to

³⁹ Annex “BB”

⁴⁰ Annex “CC”

⁴¹ Annex “DD”

⁴² Annex “EE”

⁴³ Annex “FF”

⁴⁴ Annex “GG”

⁴⁵ Annex “HH” to “JJ”

offer senior high school for School Year 2016.⁴⁶ The horrendous scope of this *de facto* privatization of senior high school is thus very evident.

60. Only children from well-to-do families who can afford private education will go to SHS and finish basic education. Children who cannot will have to squeeze themselves with millions of their fellow youth—at a rate of at least 40 students in a cramped classroom, if we believe government data,⁴⁷ or at least 60, up to even a hundred, because we see actual classrooms throughout the country and thus **do not** believe government data. Eventually, they will just drop out, and in droves.

61. Another reality that Petitioners point out—children from well-to-do families comprise a tiny minority of the school-age population.⁴⁸

62. **The appropriations for the voucher system has been steadily bloating in anticipation of the increased number of enrollees and the increased subsidy per student, dwarfing majority if not all of the programs and projects much-needed by public elementary and high schools.** In the 2015 General Appropriations Act alone, all Regional Offices and Division Offices of the DepEd have General Management and Supervision budgets—their Personal Services and Miscellaneous and other Operating Expenses—smaller than the P8,337,273,000 given to GASTPE. Human resource development for teaching, teaching-related, non-teaching and other personnel is only 29.8% of GASTPE's; Acquisition, improvements, survey and titling of school sites is 4.9%; Hardship Pay, Equivalent Records Forms (ERF), Conversion to Master Teacher (MT), Reclassification of Positions and Payment of Step increments, and Health and Nutrition Services is both 1/3; and Provision of learning resources—Textbooks/Instructional Materials is 41.5%. The list is long and depressing.

63. In the 2016 General Appropriations Act, GASTPE has increased to P9.006 billion. Added to this is the larger Senior High School Voucher Program worth P12.183 billion for non-DepEd SHSs.⁴⁹

64. The K to 12 Program's design favoring private provision of high school is also evident in Section 12 of the assailed law, which lays the road wide open for the private sector to take advantage of any lack on the part of government during the transition to full implementation of the Program in any of its aspects—infrastructure, curriculum, personnel, and others:

⁴⁶ Annex "C" (p.34)

⁴⁷ Slide 29, Annex "C"

⁴⁸ According to IBON Foundation, about 65 million Filipinos live on Php125 or even less per day.

⁴⁹ Special Provision 14 of the DepEd 2016 budget, R.A. No. 10717.

Section 12. Transitory Provisions. — The DepED, the CHED and the TESDA shall formulate the appropriate strategies and mechanisms needed to ensure smooth transition from the existing ten (10) years basic education cycle to the enhanced basic education (K to 12) cycle. **The strategies may cover changes in physical infrastructure, manpower, organizational and structural concerns, bridging models linking grade 10 competencies and the entry requirements of new tertiary curricula, and partnerships between the government and other entities.** Modeling for senior high school may be implemented in selected schools to simulate the transition process and provide concrete data for the transition plan.

65. This design benefitting private provision of high school can be seen not just in the voucher system but also in the aggressive push to allow private schools to offer by issuing permits.⁵⁰ Contrast this to the **mere total of 5,899 DepEd schools that will offer SHS, with just 196 planned stand-alone SHS nationwide.**⁵¹

66. The extensiveness of the privatization of Philippine secondary education via the voucher system under K to 12 has been recently revealed by statistics culled from the Department of Education’s website, pegging the number of private senior high schools in Metro Manila at 78% of the total. Nationally, the number of private senior high schools stands at 44% of the total. Quoting Department of Education sources, an investigative report⁵² reveals that “877,937 or 66.7 % of the total number of registrants – will go to public senior high schools (SHS)” while a total of 437,668 SHS or 33.3% of the registrants are expected to enroll in private SHS. Thus, many public school students will be forced to transfer to private senior high schools, as DepEd’s K to 12 Basic Education Midterm Report to Congress (2015b) pegs the number of public secondary high school students at 5,928,042 (81% of the total) and the number of private secondary high school students at 1,353,320 (19% of the total) in 2014.

67. Similar public-fund-for-private-schools schemes have been proven as failures in countries such as the United States and Sweden, where it led to the massive privatization of the education system, defunding of public schools, and general decline in the quality of education. Lipman⁵³ (2011)

⁵⁰ With 2,199 total permits issued as of 30 April 2015. More applications are pending, with the added incentive of being a beneficiary school under the E-GASTPE Program. Slide 34, Annex “C”

⁵¹ Slide 29, Annex “C”

⁵² <http://www.mb.com.ph/dep-ed-prepares-complete-implementation-of-k-to-12/>

⁵³ Lipman, P. (2011). Neoliberal Education Restructuring Dangers and Opportunities of the Present Crisis. *Monthly Review*, July-August 2011. Retrieved from: <http://monthlyreview.org/2011/07/01/neoliberal-education-restructuring/>

and Foster⁵⁴ (2011) have written extensively with regard to the failure of the American voucher system. Lipman explained how America's voucher system and their own publicly-funded private schools called charter schools complete the pattern of "disinvestment, privatization, and gentrification," detailing experiences of communities where "(t)he board has replaced neighborhood schools with charter schools or selective enrollment schools that most neighborhood children are unable to attend," leading to school closings that "have resulted in increased mobility, spikes in violence, and neighborhood instability as children are transferred to schools out of their neighborhoods."

68. More recent reports by Buchheit⁵⁵ and Dean⁵⁶ compile a list of charter schools' failures from underperformance relative to public schools, to "high teacher turnover" and even instances of "corruption and misuse of funds." In relation to performance, Watkins⁵⁷ (2012) points out that "the only national-scale study, conducted by Stanford University, reported that only 17 per cent of charter schools out-perform matched neighborhood public schools."

69. Discussing longitudinal data from various American states, Foster (2011) concludes that "according to its own narrow standards of schooling, as measured by standardized tests, the charter school movement has been less than successful." Meanwhile, Fisman (2014)⁵⁸ discussed the parallel failure of the Swedish voucher system, concluding that it partly contributed to Sweden's "nosedive" in recent international test rankings, by remarking that "If parents value high test scores, you can compete for voucher dollars by hiring better teachers and providing a better education—or by going easy in grading national tests. Competition was also meant to discipline government schools by forcing them to up their game to maintain their enrolments, but it may have instead led to a race to the bottom as they too started grading generously to keep their students."

⁵⁴ Foster, J.B. (2011). Education and the Structural Crisis of Capital: The U.S. Case. *Monthly Review*, July-August 2011. Retrieved from: <http://monthlyreview.org/2011/07/01/education-and-the-structural-crisis-of-capital/>

⁵⁵ Buchheit, P. (2015). Growing Evidence that Charter Schools Are Failing. Common Dreams. Retrieved from: <http://www.commondreams.org/views/2015/07/06/growing-evidence-charter-schools-are-failing>

⁵⁶ Dean, A. (2015). Time for a moratorium on charter schools. Al Jazeera. Retrieved from: <http://america.aljazeera.com/opinions/2015/4/time-for-a-moratorium-on-charter-schools.html>

⁵⁷ Watkins, K. (2012). Holding Out for the Super-Voucher: Kevin Watkins Responds to Justin Sandefur on Private vs. Public Education. World Bank Blog. Retrieved from <http://blogs.worldbank.org/publicsphere/holding-out-super-voucher-kevin-watkins-responds-justin-sandefur-private-v-public-education>

⁵⁸ Fisman, R. (2014). *Sweden's School Choice Disaster*. Retrieved from http://www.slate.com/articles/news_and_politics/the_dismal_science/2014/07/sweden_school_choice_the_country_s_disastrous_experiment_with_milton_friedman.html

70. The American and Swedish experiences on privatized education is very relevant to the Philippine situation considering that Pearson—Ayala Corporation’s partner in the Philippines’ APEC Schools – owns the Connections Academy business that operates charter schools in 21 states,⁵⁹ while the Swedish website of Pearson Assessment⁶⁰ declares that it is the “market leader in Scandinavia.” Pearson’s record in its Omega Schools in Ghana should further make the Philippines think twice about jumping into the privatization bandwagon, as a case study⁶¹ has documented how those schools “...employ unqualified teachers and pay them severely low wages” as a “principal strategy for cutting costs and increasing profit margins.”

71. More recently, another comprehensive case study⁶² has exposed how the Ayala-Pearson consortium APEC Schools shortchanges the Philippines. It is necessary to quote it at length:

“By subsidising the growth of private provision through an expansionary voucher system, DepED is delaying the need to construct more government high schools and hire more government teachers. Instead, a market-based approach involving increased private enterprise and participation has been encouraged in order to leverage private investment and resources that might help alleviate pressures on an overburdened public system. In turn, this has opened-up new commercial opportunities for global edu-businesses. Pearson and Ayala have entered the sector to both fill the ‘governance gap’ and profit from its provision of low-cost education services. APEC intends to reduce production costs to “educate” each student so that it can lower consumer costs and serve the highest number of fee-paying students. **The bottom line, however, is that APEC is a for-profit company concerned with business growth and profitability, which can have detrimental effects on the quality of learning.**

“Profits accumulated by APEC and its shareholder are ‘actually the difference between two sets of prices, the price of the goods

⁵⁹ <http://www.connectionsacademy.com/news/pearson-acquisition>

⁶⁰ <http://www.pearsonassessment.se/>

⁶¹ Riep, C. (2015b). Omega Schools Franchise in Ghana: A case of “low-fee” private education for the poor or for-profitteering?. Privatisation in Education Research Initiative (PERI). Retrieved from: <http://www.ei-ie-al.org/mercantilizacion/Mercantilizaci%C3%B3n%20educativa%20art%C3%ADculos,%20publicaciones/Ingl%C3%A9s/Low-fee%20for%20profit%20schools%EF%80%A8/Riep%20C.%20%282014%29%20Omega%20Schools%20Franchise%20in%20Ghana.pdf>

⁶² Riep, C. (2015a). Corporatised Education in the Philippines: Pearson, Ayala Corporation and the Emergence of Affordable Private Education Centers (APEC). Education International. Retrieved from http://download.ei-ie.org/Docs/WebDepot/Philippine%20Study/Research_C.%20Riep_APEC%20Philippines_final.pdf. Emphasis supplied.

*produced and their cost, i.e., the price of the goods necessary to produce them' (Polanyi, 2001, p. 72). In an effort to minimise production costs while increasing profit margins, APEC has implemented a number of cost-cutting techniques. These include a low-cost rent model that involves short-term leases in unused commercial buildings that lack the adequate space for libraries, gymnasiums, science and/or computer laboratories. For APEC, this low-cost rent scheme is drastically cheaper than purchasing land and constructing proper school facilities. Teachers hired by APEC are also typically unlicensed and, therefore, paid severely low wages. **All of these cost reduction techniques are intended to minimise operational costs so that the corporation can remain financially sustainable and profitable. Therefore, in the business of low-cost private schooling 'sometimes quality is compromised because of the companies' concern for making a profit'** remarked one APEC school manager...APEC is still advertised as 'world class private education from Ayala and Pearson.' **Further problematic is that DepED remains complicit in this arrangement, since it has relaxed a number of regulations that govern the provision of basic education in the Philippines, so that APEC and its shareholders can implement their low-cost, for-profit schooling experiment with limited government restrictions."***

72. Looking at the totality of circumstances, evident, therefore, in the entire design of the K to 12 Program is the unconstitutional abandonment of State duty, expressly stated in Section 10 of RA 10533 and implied in its failure to sufficiently fund the needs of basic education.

73. Following the general principle of public service especially to a people majority of whom live with P125 a day, government should, instead of massively subsidizing private senior high schools, work to establish a complete education system which is mandated by the Constitution's Article XIV, Section 2:

"The State shall:

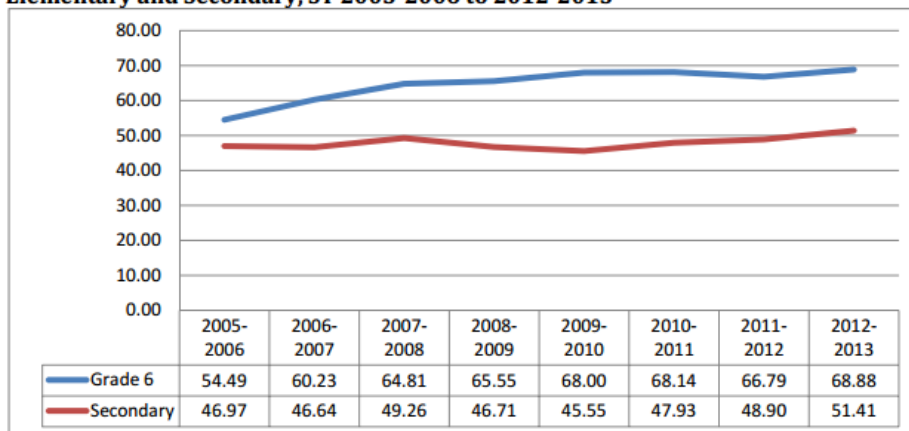
"(1) Establish, maintain, and support **a complete, adequate, and integrated system of education** relevant to the needs of the people and society"

74. Strengthening the case against the constitutionality of R.A. No. 10533 is the apparent lack of quality education in the current system which Philippine authorities have failed to resolve, and which they will only aggravate by adding two more years of secondary education without quantitative and qualitative leaps in education sector funding. The issue of

protecting and ensuring the people’s right to **quality** education is clearly a constitutional one.

75. As proven by subpar National Achievement Test (NAT) results⁶³ in recent years, the over-all quality of education in the Philippines is bad and stagnant if not declining.

Figure 16: National Achievement Test (NAT) Mean percentage Score (MPS), Elementary and Secondary, SY 2005-2006 to 2012-2013

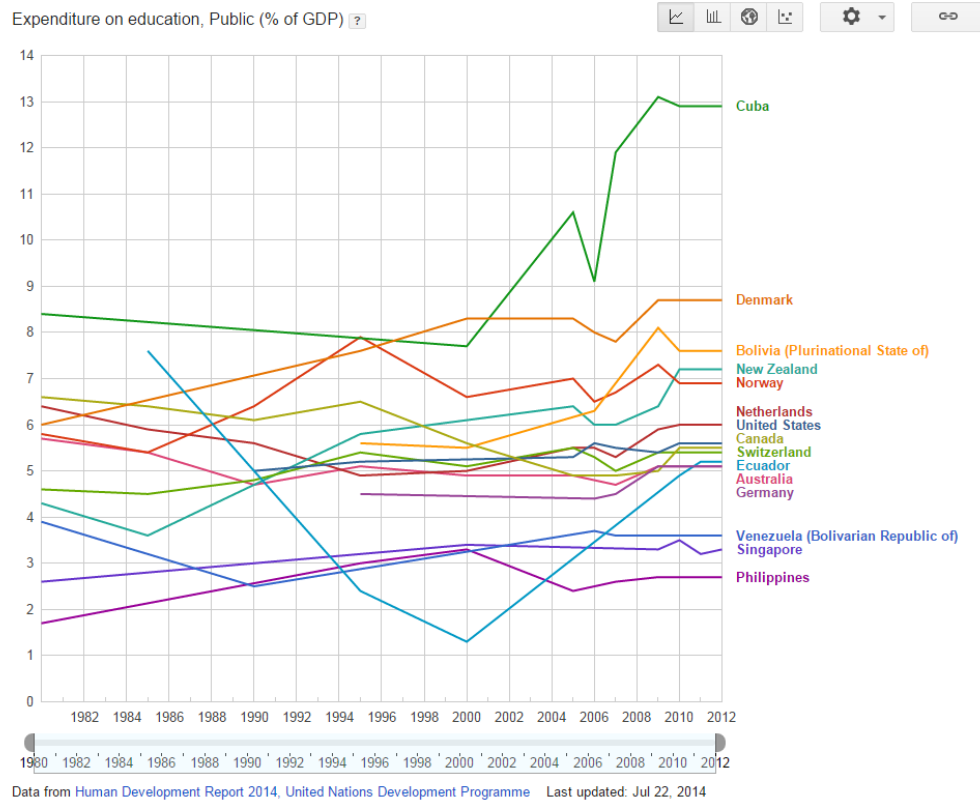


Source: NETRC, DepEd

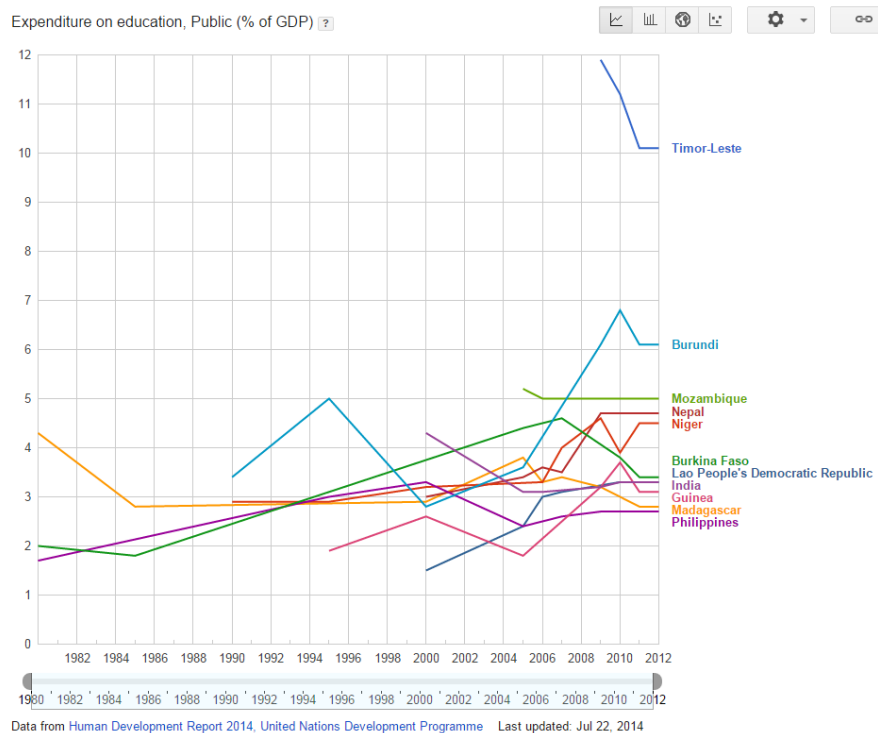
76. As per DepEd’s standards, 75 is the passing score. Thus, as the figure above proves, the average current performance of students in both elementary and high school is below the passing score! In other words, most students actually fail the NAT.

77. Adding two more years to high school will only exacerbate current problems, more especially that Philippine funding for the education sector as percentage of the Gross Domestic Product (GDP) is actually below the global standards as proven by the following tables from the United Nations:

⁶³ From: <http://unesdoc.unesco.org/images/0023/002303/230331e.pdf>



PH Education Budget as % of the GDP vis-a-vis Selected Countries with Higher Human Development Index Scores Than PH



PH Education Budget as % of the GDP vis-a-vis Selected Countries with Lower Human Development Index Scores Than PH

78. Moreover, in the highly-quantitative study⁶⁴ “Length of School Cycle and the Quality of Education” by UP Professor Abraham I. Felipe and Fund for Assistance to Private Education (FAPE) Executive Director Carolina C. Porio, it was found out that “There is no basis to expect that lengthening

⁶⁴ Annex “KK”

the educational cycle calendar-wise, will improve the quality of education...”

79. Felipe and Porio further emphasized that:

“The value of the 12-year cycle is ultimately a matter of weighing the large and certain costs against the uncertain gains in lengthening the education cycle. However, one can adopt a guideline in weighing these costs and gains. One such guideline may be that individuals who are inconvenienced by non-standardised cycles should be the ones to bear the costs of reducing those inconveniences. People in the farms and small barangays should be spared the burden of a system that will not benefit them. The government could help those interested in foreign studies and work placement by supporting an appropriate system of assessment, rather than tinker with the whole cycle length. This solution addresses the alleged problem in a more focused way and does not indiscriminately impose on every Filipino the costs of meeting the needs of a few.”

80. In contrast, respondents don’t have any single quantitative research to justify the lengthening of the school cycle in the Philippines.

81. Hence, railroading the implementation of the unconstitutional and problem-ridden RA 10533 will certainly be against the people’s constitutional right to quality education.

RA 10533 and K to 12 violate the right to select a profession or course of study, enshrined in Article XIV, Section 5 (3) of the 1987 Constitution.

82. RA 10533 also violates the right of citizens to select a profession or course of study enshrined in the Constitution:

Article XIV, Section 5. (3) Every citizen has a **right to select a profession or course of study**, subject to fair, reasonable, and equitable admission and academic requirements.

83. In implementing RA 10533, the DepEd in its Midterm Report⁶⁵ states that 49.7% of senior high schools will offer academic tracks, while 0.9% will offer arts and design programs, and 48.7% will offer technical-vocational-livelihood (TVL) tracks.

⁶⁵ Annex “C” (p.30)

84. In fact, nationwide, only 252 DepEd schools are capable of offering one or more academic strands (General Academic Strand; Accountancy, Business and Management; Humanities and Social Sciences; and Science, Technology, Engineering and Mathematics), while only 22 DepEd schools are capable all of the said strands.⁶⁶

85. In limiting the offerings of senior high schools, a number of prospective SHS students will be unable to choose their courses/professions, as the DepEd has already set what programs can be offered by every school.

86. Some Petitioners are leaders in urban poor communities such as those in Quezon City, where they attest that public senior high schools have announced that only TVL tracks will be offered, hence those who want to enrol in academic tracks will be instantly disenfranchised or forced to transfer to private JHSs.

87. Such disenfranchisement is against Article XIV, Section 5 (3) of the Constitution.

RA 10533 and K to 12 violate provisions on the nationalist character of education—one mandated to promote in the youth patriotism and nationalism, geared towards national development, and is relevant to the needs of the Filipino people—enshrined in Article II, Sections 13 and 17; and Article XIV, Sections 2 (1) and 3 (2) of the 1987 Constitution.

88. Scrutinizing the agenda and over-all emphasis of RA 10533 will further expose its unconstitutionality. At least four provisions in the Constitution emphasize the importance of nationalism in education and national development and establishing an education system relevant to the needs of the Filipino people:

Article II, Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in

⁶⁶[http://www.deped.gov.ph/k-to-12/shs?f\[0\]=field_program_offerings%3A1589&f\[1\]=field_program_offerings%3A1590&f\[2\]=field_program_offerings%3A1591&f\[3\]=field_program_offerings%3A1592&f\[4\]=field_program_offerings%3A1599&f\[5\]=field_program_offerings%3A1598&f\[6\]=field_program_offerings%3A1597](http://www.deped.gov.ph/k-to-12/shs?f[0]=field_program_offerings%3A1589&f[1]=field_program_offerings%3A1590&f[2]=field_program_offerings%3A1591&f[3]=field_program_offerings%3A1592&f[4]=field_program_offerings%3A1599&f[5]=field_program_offerings%3A1598&f[6]=field_program_offerings%3A1597)

the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Article II, Section 17. **The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism**, accelerate social progress, and promote total human liberation and development.

Article XIV, Section 2. **The State shall: (1) Establish, maintain, and support a complete, adequate, and integrated** system of education relevant to the needs of the people and society;

Article XIV, Section 3. (2) They shall inculcate patriotism and nationalism, **foster love of humanity, respect for human rights**, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, **strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency.**

89. Instead of emphasizing and incorporating the said core values of Philippine education enshrined in the Constitution, the K to 12 via RA 10533 stresses the government's obsession with the mantra of "global competitiveness" in the segment "Curriculum Development" (Section 5 of RA 10533).⁶⁷ In fact, the said segment didn't even mention any of the core values of Philippine education, and reiterated the government's mantra of "global competitiveness" in emphasizing—contrary to the Constitution's educational priorities—that the "curriculum shall be contextualized and global" in RA 10533's Section 5 (d).

90. A closer look at the K to 12 curriculum of junior, senior high school, and the new college General Education Curriculum (GEC) implemented via RA 10533 and CMO No. 20, Series of 2013, will all the more reveal the unconstitutionality of the said law, with regard to its failure to comply with the Constitution's core values of Philippine education.

91. The subject Philippine History is abolished in JHS⁶⁸ and SHS,⁶⁹ contrary to Article XIV, Section 3 (2) of the Constitution which mandates Philippine education to inculcate "**patriotism and nationalism**" and

⁶⁷ Annex "A" (p. 3)

⁶⁸ The curriculum guide for Grades 7 to 10(junior high school) in Social Science is too voluminous to be attached as an annex. Pertinent parts can be found on pages 66 to 120 of this curriculum guide:

<http://www.deped.gov.ph/sites/default/files/Araling%20Panlipunan%20Grades%20%201-10%2001.17.2014%20edited%20March%2025%202014.pdf>

⁶⁹ <http://www.deped.gov.ph/k-to-12/About/curriculum-guides/Core-SHS>

highlight the **“appreciation of the role of national heroes in the historical development of the country.”**

92. Meanwhile, as per CMO No. 20, Series of 2013, under the K to 12 scheme, subjects such as Filipino, Panitikan/Literature, and Philippine Government & Constitution – which are vital in inculcating **patriotism and nationalism**, and in teaching **the rights and duties of citizenship** – were abolished. Fortunately, the Supreme Court has recently issued a TRO against the abolition of Filipino and Panitikan in the new college curriculum. Nevertheless, the over-all obsession of RA 10533 – “global competitiveness” – remains conspicuously unconstitutional as it fails to emphasize, let alone, even just mention, the core values of Philippine education such as nationalism and patriotism.

RA 10533 and K to 12 violate provisions on the State’s duty to promote a just and dynamic social order, a self-reliant and independent national economy, comprehensive rural development and agrarian reform, and industrialization and full employment, enshrined in Article II, Sections 9, 19 and 21, and Article XII, Section 1.

93. Further highlighting the unconstitutionality of R.A. No. 10533, the course offerings in senior high school under the K to 12 Program is clearly crafted not for the Filipino people’s needs and welfare, but for the needs of big foreign businesses and their local partners, as proven by a table⁷⁰ prepared by Petitioners, listing the in-demand skills and/or professions in the top 10 destinations of Overseas Filipino Workers (OFWs) vis-a-vis senior high school courses in the Philippines, contrary to the spirit of Article XIV, Section 2. (1) of the Constitution. Many courses – such as Housekeeping and Caregiving – in the senior high school curriculum are shockingly suitable only to overseas jobs, and/or beneficial only to foreign businesses – such as Medical Transcription and Contact Center Services. Such courses under the K to 12 scheme implements the obsession of RA 10533 to prioritize “global competitiveness,” rather than the people’s needs.

94. That RA 10533 seeks to further continue the government’s socially costly Labor Export Policy (LEP) is beyond doubt.

⁷⁰ Annex “B”

95. In relation to this, RA 10533 also violates the Constitution with regard to the State's duty to promote a just and dynamic social order, a self-reliant and independent national economy, comprehensive rural development and agrarian reform, and industrialization and full employment:

Article II, Section 9. The State shall promote a just and dynamic social order that will ensure the **prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment**, a rising standard of living, and an improved quality of life for all.

Article II, Section 19. **The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.**

Article II, Section 21. **The State shall promote comprehensive rural development and agrarian reform.**

Article XII, Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

96. The Labor Export Policy (LEP) that was jumpstarted by the Marcos dictatorship should have been abandoned by succeeding administrations – had they followed the 1987 Constitution's formula for national development: full employment through agrarian reform and industrialization. Unfortunately, all administrations—from the first Aquino presidency to the current one—promoted LEP as a pseudo-fix for the country's unemployment problems, in direct violation of the Constitution's development prescriptions, as explained in detail in the journal article "*Pambansang Salbabida at Kadena ng Dependensiya: Isang Kritikal na Pagsusuri sa Labor Export Policy (LEP) ng Pilipinas/National Lifesaver and Chains of Dependence: A Critical Review of the Philippine Labor Export Policy (LEP)*"⁷¹

⁷¹ San Juan, D.M.M.

<http://ejournals.ph/index.php?journal=malay&page=article&op=viewArticle&path%5B%5D=8608>

97. Worse, the K to 12 law further aligns the country's education system to the goal of producing more Overseas Filipino Workers (OFWs), rather than fully developing the country's human and natural resources towards achieving the constitutionally mandated full employment through agrarian reform and industrialization, as elaborated in the journal article *"Kaisipang Nasyonalista at Teoryang Dependensiya sa Edukasyon: Ideolohikal na Kritik ng Programang K to 12 ng Pilipinas."*⁷²

98. In fact, the government through the *"Penultimate Report of the Inter-Agency Technical Working Group of the Department of Education, Department of Labor and the Technical Skills and Development Authority"* dated 30 April 2015⁷³ shamelessly pushes for K to 12 in connection with the LEP.

99. It is about time that the Honorable Court put a stop to this grand perfidy to our Constitution, and finally pave the way for genuine self-reliant economic development of the country through agrarian reform and industrialization and an education system that will promote such development goals, rather than an education system that props up the socially costly Labor Export Policy.

100. Consequently, an education system that prioritizes Labor Export Policy – rather than constitutional development prescriptions should be struck down as unconstitutional too.

RA 10533 and K to 12 violate provisions on the supervision, control and administration of educational institutions, enshrined in Article XIV, Section 4 (1) and (2).

101. Further proving that RA 10533 go against the Filipino people's needs, and in fact prioritizes foreign needs over the country's interest, the said law violates provisions on the supervision, control and administration of educational institutions, enshrined in the Constitution:

"Article XIV, Section 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

⁷² San Juan, D.M.M.

<http://ejournals.ph/index.php?journal=malay&page=article&op=viewArticle&path%5B%5D=7156>

⁷³ Annex "D"

“(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.

“The control and administration of educational institutions shall be vested in citizens of the Philippines.”

102. In the spirit of the aforementioned constitutional provisions, people should expect the Department of Education – and any educational agency in the Philippines – especially when implementing a national curriculum such as K to 12 – to be **fully managed, controlled, and administered** by the Philippine government and Filipino citizens.

103. As per the official website⁷⁴ of the government’s “Basic Education Sector Transformation (BEST) Program,” BEST is “a Department of Education (DepEd) program of the Republic of the Philippines. It is supported by Australian Aid through the Department of Foreign Affairs and Trade (DFAT) and is **managed by CardNo.**”

104. CardNo is a foreign corporation listed in the Australian Securities Exchange⁷⁵.

105. The 187-page “PROGRAM DESIGN DOCUMENT” of the “AUSTRALIA - PHILIPPINES: BASIC EDUCATION SECTOR TRANSFORMATION (BEST) PROGRAM” – available at the Australian Department of Foreign Affairs and Trade’s (DFAT) website⁷⁶ – provides the link between the Philippine government’s K to 12 scheme and the BEST program managed by the foreign firm CardNo: “The BEST design framework is for a 12 year period in 2 phases of 6 years each. This will allow for alignment of Australian support with the expansion of the current 10 year basic education system to a Kindergarten to year 12 (K to 12) system. At least 4 reviews will be undertaken within the period to allow for continuous learning, realignment and planning.” It is thus clear that the BEST program is among the DepEd’s implementing schemes in connection with K to 12 and RA 10533.

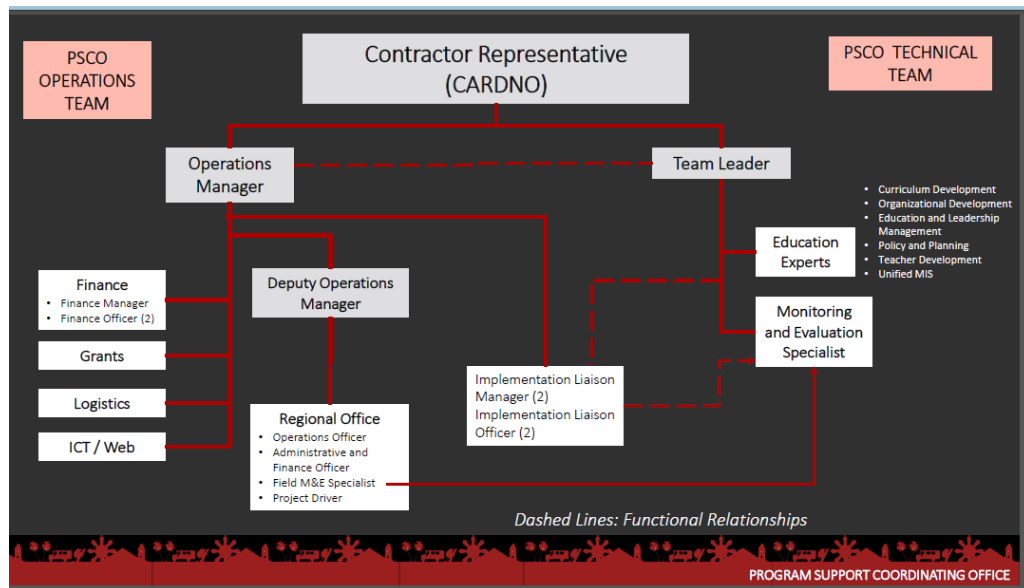
106. Other publicly-available documents such as the “BEST GOVERNANCE AND MANAGEMENT ARRANGEMENT” – which depicts the organizational

⁷⁴ <http://dfat.gov.au/about-us/grants-tenders-funding/tenders/business-notifications/pages/australia-philippines-basic-education-sector-transformation-best-program.aspx>

⁷⁵ <http://www.cardno.com/en-au/MediaCentre/Pages/Cardno-Media-Contacts-and-Information.aspx>

⁷⁶ <http://dfat.gov.au/about-us/grants-tenders-funding/tenders/business-notifications/Pages/australia-philippines-basic-education-sector-transformation-best-program.aspx>

structure of the BEST PROGRAM – in the official website of DepEd Regional Office VI⁷⁷ reveals the level and nature of general control that the foreign firm CardNo has over the Philippine government’s K to 12 program even in the regions:



107. In fact, Cardno supervises the recruitment of local specialists for the Philippine government’s K to 12 program as proven by many classified advertisements in its website.⁷⁸

108. In a 30 March 2015 letter,⁷⁹ Cardno also seeks a “Service Provider for Communication and Marketing Support for Senior High School (SHS) Implementation.” That such vital activity in the implementation of the Philippine government’s K to 12 program via RA 10533 is **under the full control and direct supervision** of a foreign corporation is enough reason to invalidate this law that goes against the constitutional provision on Philippine educational institutions’ supervision.

RA 10533 and K to 12 violate the constitutional provision on the State’s full protection for labor, and the right of workers to participate in policy and decision-making with regard to their situation, and other related provisions enshrined in Article XIII, Section 3 of the 1987 Constitution.

⁷⁷ <http://www.depedregion6.ph/pdf/BEST%20Governance%20and%20Management%20Arrangement.pdf>

⁷⁸ Annex “NN” and “OO”

⁷⁹ Annex “PP”

109. The K to 12 Law – RA 10533 – is also anti-labor as it violates the constitutional provisions on the State’s full protection for labor, and the right of workers to participate in policy and decision-making with regard to their situation:

“Article III, Section 3. **The State shall afford full protection to labor**, local and overseas, organized and unorganized, and **promote full employment** and equality of employment opportunities for all.

“It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure**, humane conditions of work, and a living wage. **They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.”**

110. Highlighting RA 10533’s anti-labor bias, government statistics admit that around 25,000⁸⁰ to 78,000⁸¹ teachers and non-teaching staff will be displaced by K to 12’s implementation. Such massive displacement could have been avoided if the government conducted massive and democratic consultations with regard to the implementation of R.A. No. 10533.

111. Unfortunately, most Petitioners – like majority of teachers and employees in the education sector – were not consulted prior to the signing and implementation of R.A. No. 10533, in direct violation of Article XIII, Section 3 of the Constitution.

112. Petitioners dispute respondents’ claim that RA 10533 was enacted in accordance with the procedure described in the Constitution.⁸²

113. Petitioners reiterate that most of them were never consulted prior to the crafting of R.A. No. 10533,⁸³ and moreover no people’s organizations were consulted prior to the crafting of R.A. No. 10533, in direct violation of Article XIII, Sections 3, 15 and 16 of the Constitution.

114. Petitioners dispute Respondents’ claim that “[t]here is nothing in the Constitution and the law that impose the conduct of consultations as a requisite for the effectivity of laws,” because it suppresses the question of the substantive and effective exercise of the people of their rights to participate in the formulation of policies affecting them.

⁸⁰ Annex “C” (p.41)

⁸¹ Annex “D” (p.14)

⁸² Page 27 of the COMMENT

⁸³ Paragraph 125 of the Petition

115. The right of the people to be consulted by government in the formulation of policies that will affect them is found in scattered provisions of the Constitution:

- a. Section 1 of Article II (democracy and sovereignty);
- b. Section 3 of Article XIII (workers and employees with respect to labor policies);
- c. Section 16 of Article XIII (individuals and peoples' organizations with respect to social, political, and economic decision-making);
- d. Section 17 of Article XIV (indigenous cultural communities with respect to the consideration of indigenous cultures, traditions, and institutions formulation of national plans and policies);
- e. Section 3 (3) of Article XIII (families with respect to programs affecting them); and
- f. Section 27 of Article II, Section 1 of Article XI, and Section 27 of Article II (openness and transparency in government and of public officers).

116. Petitioners' rights to consultation also have basis in various laws such as *The Magna Carta for Public School Teachers*,⁸⁴ the charters of state universities and colleges, the 1966 UNESCO-ILO Recommendation concerning the Status of Teachers, and the 1997 UNESCO-ILO Recommendation concerning the Status of Higher Education Teaching Personnel.

117. Such position waving aside the people's right to consultation is also dangerously dictatorial. Petitioners assert that the Philippines is a democratic country, hence, as per Article XIII, Sections 3, 15 and 16 of the Constitution, democratic and massive consultations are required for legislation and other similar activities.

118. Moreover, RA 10533 fails to fulfill the State's constitutional mandate to provide full protection to labor, as it never included any provision that will sufficiently address the difficulties that will be certainly encountered by tens of thousands of faculty members and non-teaching staff who will be displaced by the implementation of K to 12.

119. In fact, in Section 6 of RA 10533⁸⁵, teachers' organizations were not even mentioned in the listed components of K to 12's "Curriculum Consultative Committee," while business chambers are explicitly included.

⁸⁴ Section 29 of R.A. 4670

⁸⁵ Annex "A" (p.5)

120. As of this writing, the government is yet to publicize a plan and/or mechanism that will provide full protection to those who will be displaced by the K to 12 scheme. House Bill 5493, “Establishing the Tertiary Education Transition Fund to develop and sustain tertiary education institutions during the transition period of the Enhanced Basic Education Act of 2013, and appropriating funds therefor” is still pending at the House Committee on Higher and Technical Education, roughly a school year before massive displacements of professors and non-teaching staff starts because of K to 12!

121. Petitioner Representative Tinio pointed out during a public hearing that there is no certainty that HB 5493 will be passed into law before 2016. In fact, the president did not even include it in his list of bills certified as urgent.

122. Congress leaders, the Department of Budget and Management (DBM), and the Office of the President are also unbelievably silent on the issue of establishing the aforementioned P29.44-billion Tertiary Education Transition Fund (TETF).

123. R.A. No. 10533’s only program for those who will be displaced is a promise that teachers of HEIs “shall be given priority in hiring” for public senior high schools⁸⁶.

124. Such policy is of course anti-labor, as it will unjustly decrease the income and increase the work load of many college/university professors who will be forced by K to 12 to transfer to public senior high schools. For example, in the National Capital Region, as per the government’s own data⁸⁷, the mean salary of full-time faculty in SUCs, LUCs, Private Non-Sectarian, and Private Sectarian tertiary level institutions are as follows: 36,168 pesos; 29,475 pesos; 21,062 pesos; and 40,955 pesos. Such mean salary rates are definitely higher than the entry-level pay for Teacher II position – that will be granted to professors who will transfer to public senior high schools – which is merely 19,940 pesos. Moreover, it must be emphasized that work loads in NCR tertiary level institutions are relatively lighter than work loads in public elementary and high schools. For example, the full teaching load of teachers in some NCR colleges and universities is only 12 - 18 hours per week, while in public elementary and high schools, the full teaching load is 30 hours per week.

125. Hence, educators and non-teaching personnel have no full protection in the implementation of R.A. No. 10533.

⁸⁶ Annex “A” (p.8)

⁸⁷ Annex “D” (p.22)

126. In fact, some of the Petitioners - who are part-time college professors - attest that their respective school administrators have announced that they will be fired as soon as K to 12 is fully-implemented.

127. Meanwhile, some schools, such as Saint Louis University (SLU) in Baguio City have released documents detailing “projections for faculty requirements” in connection with K to 12,⁸⁸ implying that even full-time faculty members will be displaced as early as the second semester of School Year 2016-2017, with more displacements projected for School Year 2017-2018.

128. In the University of Santo Tomas (UST), contracts⁸⁹ for full-time “fixed-term” faculty members explicitly state that they will not be rehired come 2016 because of the K to 12 program. Some of these faculty members could have become permanent by 2016 as they have served for at least three school years, but they were not considered probationary employees because of the anticipated impact of K to 12.

129. Petitioners assert the fact that massive labor displacement has already occurred. Thousands of part-time professors – and even tenured faculty – in many colleges and universities are now jobless because of K to 12. Petitioners are doubly disappointed when the Supreme Court rejected their call for an oral arguments on K to 12-related cases, as Petitioners would have taken that opportunity to let displaced professors tell their stories before the Honorable Court. Petitioners have already submitted documents proving that K to 12 displaced many professors and education sector, and the oral arguments sessions could have provided personal narratives – life stories of actual people who suffered because of the implementation of an unconstitutional scheme. The wretchedness, suffering and dehumanization that K to 12 brought to Petitioners and their families cannot be possibly holistically told in mere numbers and statistics. A crisis of epic proportions will soon explode if the Esteemed Court fails to stop R.A. No. 10533’s implementation. There will be blood in the hands of those who insist on ramming this anti-labor program down our throats.

130. Hence, it is clear that RA 10533 is anti-labor and its adverse labor impact is now felt. Worse, bigger displacements are expected come 2016. Petitioners thus entreat the Honorable Court to stop this anti-labor scheme, once and for all.

RA 10533 and K to 12 violate the right of the people and their organizations to effective and reasonable participation at

⁸⁸ Annex “QQ”

⁸⁹ Annex “E”

all levels of social, political, and economic decision-making, enshrined in Article XIII, Sections 15 and 16 of the 1987 Constitution.

131. Aside from being anti-labor, R.A. No. 10533 is also anti-people as it violates the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making, enshrined in the Constitution:

“Article III, Section 15. **The State shall respect the role of independent people’s organizations to enable the people to pursue and protect, within the democratic framework,** their legitimate and collective interests and aspirations through peaceful and lawful means.

“People’s organizations are *bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.”

“Article III, Section 16. **The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged.** The State shall, by law, facilitate the establishment of adequate consultation mechanisms.”

132. No people’s organizations were consulted prior to the legislation and implementation of R.A. No. 10533. In fact, people’s organizations are all consistently against the implementation of the K to 12 scheme as proven by this Petition signed many Petitioners who are leaders of various people’s organizations. Petitioners are also ready to present to this Honorable Court, copies of anti-K to 12 petitions signed by thousands of citizens around the country.

133. In fact, even R.A. No. 10533’s token and post-legislation “consultations” mentioned in Section 5⁹⁰ does not include people’s organizations.

134. Hence, since its inception, RA 10533 is invalid and unconstitutional as it is a top-down imposition which failed to adequately fulfil the constitutional provision on grassroots’ level consultation.

⁹⁰ Annex A (p.4)

RA 10533 and K to 12 violate the provisions on the State's duty to consider the rights of indigenous cultural communities in the formulation of national plans and policies enshrined in Article XIV, Section 17 of the 1987 Constitution.

135. Related to the aforementioned point, RA 10533 violates the provisions on the State's duty to consider the rights of indigenous cultural communities in the formulation of national plans and policies:

“Article XIV, Section 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. **It shall consider these rights in the formulation of national plans and policies.**”

136. Petitioners assert that the government did not adequately and properly consult indigenous cultural communities prior to the legislation and implementation of RA 10533 despite its mention of a Mother Tongue Based-Multilingual Education scheme in the primary level. In fact, even the said scheme won't include all existing mother tongues.

137. As mentioned in earlier segments of this Petition, RA 10533 is obsessed not with national, local, and indigenous needs, but rather, with “global competitiveness.” Hence, as RA 10533 failed to consider the rights of indigenous cultural communities, it is unconstitutional from its inception.

RA 10533 and K to 12 violate the provisions on the State's duty to provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills, enshrined in Article XIV, Section 2 (5) of the 1987 Constitution.

138. R.A. No. 10533 also violates the constitutional provisions on the State's duty to provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills:

“Article IV, Section 2. The State shall: x x x (5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.”

139. In fact, R.A. No. 10533 fails to provide mechanisms on how the aforementioned groups - whose educational needs the State is duty-bound to serve too - will be accommodated in the K to 12 program. The said law merely mentions in Section 3 that “Basic Education” encompasses “alternative learning systems for out-of-school learners and those with special needs.”⁹¹

140. Respondents merely claimed that DepEd “has already put in place programs” for indigenous peoples, Muslim schoolchildren, adult learners and PWDs⁹² without offering any proof on the *actual existence* of such schemes. In fact, respondents only enumerated *old*, mostly pre-K to 12 DepEd orders related to the indigenous peoples, the youth, and madrasahs in the country.⁹³ Such orders have nothing to do with K to 12, and as petitioners remark, R.A. No. 10533 have no clear mechanisms to comply with Sections 1, 2, and 17 of Article XIV of the Constitution.

141. Hence, R.A. No. 10533 is unconstitutional from its inception as it miserably fails to provide mechanisms for the inclusion of groups with special needs in the new education system.

RA 10533 and K to 12 violate linguistic, cultural, and educational provisions, enshrined in Article XIV, Sections 3 (1), 6, 7, 14, 15, 17, 18 (1) & 18 (2) of the 1987 Constitution.

142. Finally, R.A. No. 10533 violates linguistic, cultural and educational provisions enshrined in the Constitution.

143. In paving the way for the abolition of Filipino and Panitikan (Literature) through CMO No. 20, Series of 2013 which stemmed from RA 10533, the implementation of the said law violates the following constitutional provisions:

“Article XIV, Section 6. **The national language of the Philippines is Filipino.** As it evolves, it shall be further developed and enriched on the basis of existing Philippine and other languages.

“Subject to provisions of law and as the Congress may deem appropriate, **the Government shall take steps to initiate and sustain the use of Filipino as a medium of official communication and as language of instruction in the educational system.**”

⁹¹ Annex A (p.2)

⁹² Page 58 of the Comment

⁹³ Pages 58 to 60 of the Comment

“Article XIV, Section 7. For purposes of communication and instruction, the official languages of the Philippines are Filipino and, until otherwise provided by law, English.”

“Article XIV, Section 14. The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression.”

“Article XIV, Section 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation’s historical and cultural heritage and resources, as well as artistic creations.”

“Article XIV, Section 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.”

“Article XIV, Section 18. (1) The State shall ensure equal access to cultural opportunities through the educational system, public or private cultural entities, scholarships, grants and other incentives, and community cultural centers, and other public venues.

“(2) The State shall encourage and support researches and studies on the arts and culture.”

144. By abolishing in the tertiary level subject Philippine Government & Constitution through CMO No. 20, Series of 2013 which stemmed from RA 10533, and in abolishing Philippine History in junior high school and failing to include it in the senior high school curriculum, the implementation of the said law violates the following constitutional provisions:

“Article XIV, Section 3. (1) All educational institutions shall include the study of the Constitution as part of the curricula.”

“Article XIV, Section 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation’s historical and cultural heritage and resources, as well as artistic creations.”

145. Petitioners adopt, insofar as may be allowed by the Rules of this Honorable Court, the arguments in these issues of the Petitioners in G.R. 217451 in *Dr. Bienvenido Lumbera v. President Benigno Simeon Aquino III*.⁹⁴

146. Petitioners find the Respondent's averment on CMO No. 20, Series of 2013 bereft of substance,⁹⁵ as it failed to refute Petitioners' constitutional arguments.

147. Moreover, with regard to this matter, Petitioners adopt and reiterate the arguments of petitioners in a separate yet related Petition filed by TANGGOL WIKA⁹⁶ and their REPLY to the OSG's Comment thereto dated August 20, 2015, especially since Respondents herein merely repeated their baseless verbiage that they have weakly deployed in the said Comment.

148. Instead of answering Petitioners' clear assertions on the K to 12 curriculum's violation of at least nine provisions of the Constitution⁹⁷ point by point, Respondents claimed RA 10533's and C.M.O. No. 20's "presumption of constitutionality."⁹⁸ Petitioners hope that the Esteemed Court will be moved enough to stop K to 12's mockery of the Constitution's basic tenets on nationalism, language, education, culture, and history.

149. Petitioners assail Respondents' empty claim that the case is merely hypothetical.⁹⁹ As explained and proven in the Petition,¹⁰⁰ the implementation of RA 10533 and CMO No. 20 pose an undeniable and actual danger to life and livelihood of around 100,000 faculty members and workers in the tertiary education sector. Hence, contrary to Respondents' claim, the Petition needs to be immediately resolved as it affects the life and livelihood of around 100,000 citizens. Several closures of entire departments, dismissals, demotions, and other K to 12-related damages to teachers and non-teaching staff nationwide are already happening and widely reported.

150. Respondents also aver that "Filipino, Philippine Government and Constitution, *Panitikan* x x x are integrated into the basic education curriculum." They, however, only need to answer *if, in colleges and universities, these subjects are still in the revised GEC and if Filipino is still mandatory as medium of instruction*. The answer undeniable from the face of C.M.O. No. 20 is "No"—making the issuance inconsistent with Sections 3,

⁹⁴ Filed on 15 April 2015.

⁹⁵ Pages 52 to 57 of the Comment

⁹⁶ *Dr. Bienvenido Lumbera, et al. v. Pangulong Benigno Simeon C. Aquino III*, G.R. No. 217451

⁹⁷ Paragraphs 149 to 152 of the Petition

⁹⁸ Page 54 of the Comment

⁹⁹ Page 55 of the Comment

¹⁰⁰ Paragraphs 134 to 136, and Annexes "QQ" and "E"

6, and 7 of Article XIV, all of which pertain to all levels of education, including the tertiary level.

151. In a similar line of argument, Respondents say that these subjects are not removed, they are just not mandatory.¹⁰¹ In a largely deregulated sector such as private tertiary education where CHED has a minute say in the curriculum, this line begs the question. The fact that these subjects are not mandatory means that they *are* removed—These subjects have only the slightest chance to see the light of day, and consequently, the teachers and staff previously working on these subjects are entirely dependent on the discretion of school administrations on whether their posts will remain. They are barred from seeking recourse with CHED if they want to insist that Filipino, Constitution, and *Panitikan* remain in college.

152. Petitioners also wish to emphasize that many publicly-funded for-profit private senior high schools such as the Ayala-Pearson-owned APEC Schools shamelessly and blatantly violates the country's national language policy (Filipino as primary medium of instruction and official language of communication enshrined in Article XIV, Section 7 of the Constitution), in effect using public funds to promote English rather than Filipino as evident in its promotional videos shown in cinemas nationwide and available online.¹⁰²

153. Despite the government's claim that K to 12 is meant to make the Philippines globally competitive, it is a big irony that the Philippines' mandatory minimum General Education units under K to 12 (enforced through CMO No. 20, Series of 2013) – 36 units (down from 51 to 63 units before K to 12 was implemented) – is less than what many universities in Asia and the United States prescribe, ranging from 39 to 108 units.

154. K to 12 abolished subjects vital to molding nationalist, socially conscious, holistically skilled citizens. Under its tech-voc obsession, high school and college education have been reduced to the mere learning of technical skills for immediate employment, as the K to 12 scheme seemingly aims to “create a new generation of children who will not have the ability to think or create or listen” and where schools are run “like a factory for turning out moneymaking snobs.”¹⁰³

155. Instead of Paulo Freire's “pedagogy of liberation” suitable to the country's post-colonial/neocolonial context, Philippine authorities are institutionalizing a “pedagogy of the oppressed” that will perpetuate

¹⁰¹ Page 53 of the Comment

¹⁰² <https://www.youtube.com/watch?v=ULZXyTMHy80>;

https://www.youtube.com/watch?v=JxE_iVv6nF4; <https://www.youtube.com/watch?v=uiBrdDWZ7rk>

¹⁰³ “Mr. Holland's Opus” (1995) and “Goodbye Mr. Chips” (1939)

oppression and all the dehumanizing realities of human wretchedness under neoliberal capitalism such as outrageous wealth for a tiny minority in the midst of hunger, precarious employment, zero hours contracts, and starvation wages. Simply put, because it obliterated academic spaces for critical pedagogy, K to 12 in the Philippines will churn out docile laborers – almost powerless cogs of the neoliberal world order where a tiny elite controls everything as almost everyone is a slave: a perfect education system to turn this country into a nation of slaves.

II

THE IMPLEMENTATION OF RA 10533 AND K TO 12 GOES AGAINST THE FILIPINO PEOPLE’S WELFARE

156. On top of the gross violations of the Constitution committed by the government when it legislated RA 10533 and implemented it, Petitioners emphasize that its implementation goes against the Filipino people’s welfare. The Philippine government HAS NOT ENOUGH FUNDS for adding two years of senior high school, as evident in its failure to provide sufficient funding for the old K to 10 (Kindergarten to Grade 10) or 10-year Basic Education Cycle and its 547 state universities and colleges (SUCs).

157. For example, “ideal”¹⁰⁴ teacher-student ratio in the Philippines as per DepEd standards are subpar in contrast with actual ratio in our ASEAN neighbors and other selected countries, from the World Bank’s online database:

LEVEL	RATIO
PH Kindergarten	1: 25-35
PH Multigrade Elem.	1: less than 30
PH Monograde Elem. (Grades 1-2)	1:40-50
PH Monograde Elem. (Grades 3-8)	1:45-55
PH Secondary	1:45-55
CHINA (elem.)	1:18
USA (elem.)	1:14
CUBA and SWEDEN (elem.)	1:9
BRUNEI (elem.)	1:11
INDONESIA (elem.)	1:19
LAOS (elem.)	1:27
MALAYSIA (elem.)	1:12
MYANMAR (elem.)	1:28
THAILAND (elem.)	1:16

¹⁰⁴ As defined in <http://www.dbm.gov.ph/?p=8459>

VIETNAM (elem.)	1:19
TIMOR LESTE (elem.)	1:31

158. Hence, even if DepEd’s claims of resolving the classroom and teacher backlogs were true, the teacher-student ratio in the Philippines is far from ideal and drastically affects the over-all quality of education.

159. Let us bear in mind that DepEd in fact acknowledges that there are still classroom backlogs in populous areas, as DepEd Assistant Secretary Jess Mateo says in an interview.¹⁰⁵

160. Teachers also complain that a number of classes go beyond the “ideal” DepEd teacher-student ratio. ACT Teachers Partylist Rep. Antonio L. Tinio, in the explanatory note¹⁰⁶ to House Bill No. 443 or “An Act Regulating Class Size in All Public Schools and Appointing Funds Therefor” (July 2013) emphasizes that “(i)t is no longer uncommon to see teachers handling classes with 60 to 80 students.”

161. Public school teachers’ and non-teaching staff’s salaries in the Philippines are also subpar. Teachers’ organizations, including the organizations of Petitioners, have been calling for the immediate upgrade of education sector workers’ entry-level salaries from 23,044 pesos to 26,878 pesos for Instructor 1 in state colleges and universities; 18,549 pesos to 25,000 pesos for Teacher 1 in DepEd schools; and 9,000 pesos to 16,000 pesos for non-teaching personnel, at a time when a PMA cadet’s entry-level salary is pegged at 27,425 pesos.

162. Moreover, state colleges and universities suffer from perennial underfunding - if not outright budget cuts - with the national government forcing them to engage in commercialization schemes (income-generating projects) such as the long-term lease of school property in the case of the University of the Philippines-Diliman and Bulacan State University, to name just a few examples. Such perennial underfunding and/or budget cuts cause clear backlogs in personnel, facilities etc. in many state colleges and universities.

163. Hence, instead of adding two years of senior high school, the government should prioritize resolving the deficiencies in personnel, facilities, and instructional materials that plague the current education system. Moreover, the government should also prioritize salary upgrades for teaching and non-teaching personnel to ensure quality education.

¹⁰⁵ <https://anc.yahoo.com/video/teachers-group-backlogs-current-system-043852231.html>

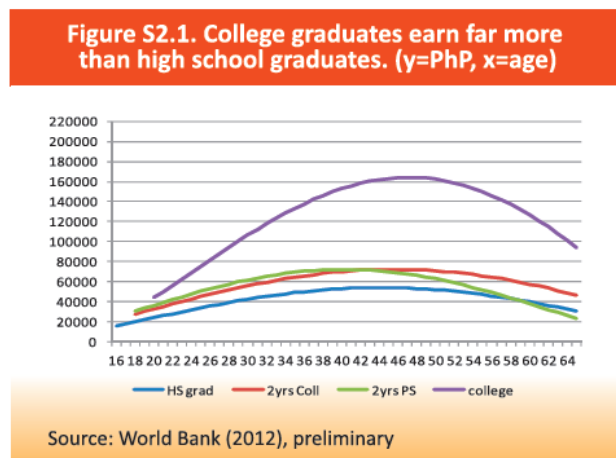
¹⁰⁶ http://www.congress.gov.ph/download/basic_16/HB00443.pdf

164. Resolving those deficiencies will certainly optimize the quality of Philippine education and pave the way to a clearer and more fruitful debate on whether or not adding two more years in the education cycle is still necessary. Adding two more years of senior high school without resolving the deficiencies of the K to 10 education cycle and the country’s tertiary education system will only exacerbate current problems. Adopting global standards should begin by resolving the aforementioned problems first.

165. The best way to start adopting global standards is to adopt the global standard in allotting budget for the education sector, which is pegged at 6% of the GDP. Both richer and poorer countries beat the Philippines with regard to following global standards on the education sector budget. Unless this problem is remedied, there is no reason for any sane citizen to believe that the government can provide funds for the smooth, efficient, and effective implementation of K to 12.

166. Contrary to Respondents’ rhetoric, there is no assurance that graduates of the senior high school program will gain good employment. It is very likely that not all senior high school graduates will be able to find jobs, at this time that even college graduates find it difficult to seek good-paying jobs. It is very likely that only low-paying, contractual jobs will be available to senior high school graduates.

167. Moreover, the average wage of non-college graduates in the Philippines should make everyone think a million times before swallowing K to 12’s bitter anti-tertiary education mantra:



**Average Earnings of Workers
Grouped According to Highest Educational Attainment¹⁰⁷**

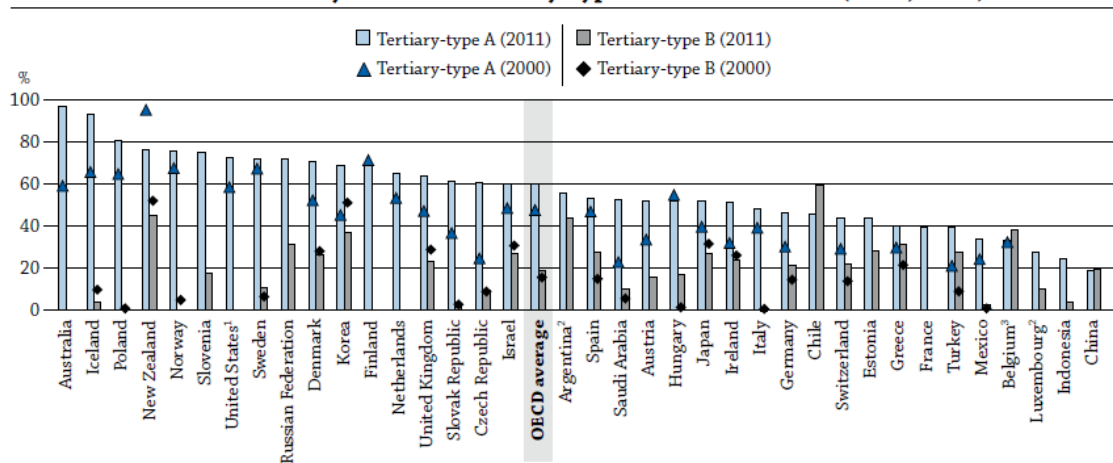
¹⁰⁷ “Investing in Inclusive Growth Amid Global Uncertainty,” a World Bank PHILIPPINE QUARTERLY UPDATE (July 2012).

168. Clearly, the average salary of college graduates is higher than the average salary of non-college graduates as the figure above says. We do not want our young people trapped in low-wage jobs, especially under contractual employment set-ups tolerated if not encouraged by pro-capitalist and anti-labor governments around the world. Hence, RA 10533's obsession with "global competitiveness," and its mantra of discouraging poor students from entering college, is nothing but a veiled attempt to further drag the Philippines to the "global race to the bottom" plaguing other K to 12 countries – like China, Vietnam, and Indonesia – now.

169. It is worth mentioning that according to the DepEd's "K to 12 Basic Education Program Midterm Report" (May 5, 2015), 596,000 student slots equivalent to 48.7%¹⁰⁸ of schools and slots are in the Technical-Vocational-Livelihood tracks which are of course not very suitable for students who want to enrol in college.

170. Such TVL obsession and mantra of discouraging poor students from entering college is directly opposite to what industrialized countries are doing – encouraging citizens to finish university education. The following chart from the 440-page "Education at a Glance 2013 OECD indicators" Report (p.292)¹⁰⁹ released by the Organisation for Economic Co-operation and Development (OECD) shows that First World countries' entry rates in tertiary education range from Australia's more than 85% and Israel's 60%, in contrast with the Philippines' measly gross tertiary level enrollment rate pegged at 28.20% in 2009 as per data from the UNESCO Institute for Statistics.¹¹⁰

Chart C3.2. Entry rates into tertiary-type A and B education (2000, 2011)



171. As per the United Nations' Human Development Index (HDI) Report 2014, there are 70 countries poorer than the Philippines. Only two of those 70 countries (Angola and Djibouti) are non-K to 12 countries. In other

¹⁰⁸ Annex "C" (p.30)

¹⁰⁹ <http://dx.doi.org/10.1787/eag-2013-en>

¹¹⁰ <http://data.uis.unesco.org/?queryid=142>

words, 68 K to 12-compliant countries are more underdeveloped (or poorer) than the Philippines! One may not necessarily agree with the exiled Philippine communist leader Jose Maria Sison's politics, but he is right to point out (2015) that "many countries have been on K-12 for decades yet remain grossly underdeveloped and fare even worse than the Philippines on educational indicators."¹¹¹ Evidently, peripheral countries need more than just superficial educational reforms to achieve genuine economic development. Judging from the experiences of industrialized countries where college enrolment rates are relatively higher, discouraging citizens from achieving higher education will not enable a peripheral country to liberate itself from poverty, dependency and underdevelopment.

172. Another pressing issue which proves RA 10533 is against the people's welfare, is the lack of adequate mechanisms for teacher training under the new curriculum which adopts "spiral progression approach."¹¹² Teacher training in the Sciences and Mathematics are especially problematic within such context, as it will involve long-term, rather than short-term training. For example, in junior high school, all Science teachers will have to undergo Biology, Chemistry, and Physics training as Science education involves a little bit of these fields in every junior high school level, in contrast with the old curriculum where only one field is tackled per school year. It must be emphasized that these disciplines require separate bachelor's degrees. That RA 10533 failed to include mechanisms for massive and adequate teacher training means that the said law will certainly be bad for the country. It will be a disaster, come 2016. The said law's failure to address problems in science education has been comprehensively explained in a recent article.¹¹³ It must be noted that K to 12 actually abolished Science as a separate subject in Grades 1 to 2,¹¹⁴ further highlighting the over-all weakness of the said program.

173. In view of the abovementioned, instead of a problem-ridden K to 12, we need a nationalist-oriented curriculum relevant to the needs of our people.

174. Any additional budget for education will be useless unless the education and economic systems of the country are not reoriented. We can change the subjects as frequent as we can but we should emphasize inculcating values for national development and international solidarity,

¹¹¹ Sison, J.M. (2015). APEC's Neoliberal Offensive and its Effect on Philippine Education, <http://josemariasison.org/apecs-neoliberal-offensive-and-its-effect-on-philippine-education/>

¹¹² Annex "A"

¹¹³ Manila Times: Dr. Giovanni Tapang: *Are we prepared for the K-12?*, <http://www.manilatimes.net/are-we-prepared-for-the-k-12/174317/>

¹¹⁴ *The Philippine DepEd Scraps Science Subject From Grade 1, 2 Classes*, <http://www.asianscientist.com/2012/02/academia/philippine-deped-removes-science-and-health-in-grade1-2-classes-2012/>

rather than subscribing to dependency on failed foreign frameworks and the race-to-the-bottom doctrine preached by global capital. Hence, the country's labor export policy must be scrapped, including the related policy that treats schools in the Philippines as mere manufacturers of workers and professionals for export.

175. To complement such endeavors, job opportunities within the country must be broadened through implementing a comprehensive economic plan that focuses on self-reliance or self-dependence. This can be done through national/nationalist industrialization, agrarian reform, and modernization of agriculture. Hence, the Philippines must utilize its resources for its own citizens' progress, and not merely as exports to other countries. The Philippines have all natural and human resources needed by a country to become holistically developed and a net contributor to the global struggle against inequality and exploitation.

176. In view of what has been discussed above, Petitioners ask the Honorable Court to strike down RA 10533 as unconstitutional.

177. If the law is not declared unconstitutional, another solution can be tried. Considering that the K to 12 Law has been enacted only in 2013, it is just logical that children who started their Kindergarten education on that year be the first batch to undergo the K to 12 scheme, if the next round of discussion and debate favors the adoption of K to 12. Hence, logically, if K to 12 is adopted, its implementation in college must start in 2025. That will give us ample time to prepare the whole education system for an overhaul that will be aligned with our country's needs.

ON THE ISSUES RAISED IN THE CONSOLIDATED COMMENT

THE PROPRIETY OF PROHIBITION AND CERTIORARI UNDER RULE 65, THE "PRESIDENTIAL IMMUNITY FROM SUIT," THE JUSTICIABILITY OF THIS CASE, AND THE DEMANDABILITY OF THE RIGHT TO EDUCATION AND OTHER RIGHTS INVOKED

178. Petitioners stress that Respondents committed grave abuse of discretion. Thus, the instant case is justiciable under the expanded judicial power of the Supreme Court.¹¹⁵

179. Respondents merely invoke DepEd and CHED's rule-making powers to deflect Petitioners' allegations of grave abuse of discretion. They miss,

¹¹⁵ Second paragraph of Section 1, Article VIII

however, the fact that such powers are merely subordinate legislation subject to the limits of the Constitution and law.

180. The OSG prays for the dropping of President Aquino as Respondent, invoking immunity from suit which the OSG says he enjoys.

181. To this, Petitioners emphasize that “presidential immunity from suit” is not wholly accepted in this jurisdiction considering our fundamental law and jurisprudence. There is, in fact, a “judicial disinclination to expand the privilege especially when it x x x impairs the vindication of a right.”¹¹⁶

182. Petitioners stress that a concept having origins in common law such as presidential immunity is no match for the express edict of the 1987 Constitution which states that:

“Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”¹¹⁷

183. That the Petition raises legally demandable and enforceable rights is undeniable from a reading thereof.

184. The K to 12 Law as an act of the Respondents, President Aquino’s most of all, is assailed via certiorari and prohibition under Rule 65 of the Rules on Civil Procedure, the remedy contemplated in both aspects of Section 1 of Article VIII (settlement of actual controversies and grave abuse of discretion).

185. The so-called executive immunity is also no match for the various rights of the people assured by scattered provisions in our fundamental law and the principles of transparency and good governance, including the constitutional proclamation that public office is a public trust.¹¹⁸

186. Using an American citation, Respondents aver that the constitutional provisions relied upon by petitioners are mere declarations of general policies and principles which only serve as outlines for the Legislature on how to secure citizens’ rights, “but are usually not self-executing. They are broad policy statements that do not provide causes of action.”¹¹⁹

¹¹⁶ *Joseph Estrada v. Aniano Desierto*, G.R. Nos. 146710-15, March 2, 2001

¹¹⁷ Second paragraph of Section 1, Article VIII

¹¹⁸ Section 1, Article XI

¹¹⁹ Page 55 of the Comment

187. In effect, they wish to set aside Petitioners' invocation of their rights, including that to free and accessible education, on the theory that the people cannot rely on the plain meaning of constitutional terms such as "a system of free public education in the elementary and high school levels," "education relevant to the needs of the people and society," and "compulsory elementary education." This position implies that the Executive and Legislative branches are free to redefine or dilute these terms, and seeking recourse from the Court is impossible when they do so.

188. First, Petitioners submit that these are plain and everyday terms which, far from being empty exhortations, are assurances of real rights, especially for the usual Filipino. A parent in our poverty-ridden society who reads "free public education" would assume that his or her child can enter any public school free of charge and graduate from high school with the least cost entailed. Any child from a farmer or fisherfolk family can safely assume that it is his or her right to be learned in agricultural science or like pursuits because that is what is called for by his family in particular and society in general. The political branches simply cannot enact a law that will fail these expectations like R.A. 10533, into which private provision of junior and senior high school is intricately woven, geared for labor export, and having a bias for industries such as call centers.¹²⁰

189. Petitioners plead for the Court to declare as self-executing the constitutional provisions that Petitioners invoke, in particular those referring to education and labor. To this end, they seek the application to this case the rationale in *Oposa v. Factoran* which so justly and humanely declared the right to a healthful and balanced ecology as a valid cause of action.¹²¹ In other words, Petitioners seek the Court's intervention to declare henceforth the right to free and accessible education as legally demandable.

190. A contrary interpretation would render any action assailing education laws as non-justiciable upon the government's mere allegation that constitutional provisions on the right to free education is not self-executing. Such a reading is inconsistent with justice, especially in a society where majority of the people cannot afford to adequately feed themselves, moreso afford private education, and surely not intended by the Constitution.

191. Both *Oposa* and the instant controversy are class suits invoking the rights of minors and consequently, the future of the nation. The right to a healthful and balanced ecology and the right to education are both

¹²⁰ Sections 2 (a) and (b), 5, 6, 10, and 12 of R.A. 10533

¹²¹ *Juan Antonio Oposa, et al. v. Fulgencio Factoran, et al.*, G.R. No. 101083, 30 July 1993

enshrined in the Constitution and possessed collectively by all members of the young generation.

192. *Oposa* has this to say for the right to a balanced and healthful ecology, and Petitioners herein plead for the Court to say that the same holds equally true for the right to education:

“[I]t does not follow that [the right to a balanced and healthful ecology] is less important than any of the civil and political rights enumerated in the [Bill of Rights]. **Such a right** belongs to a different category of rights altogether for it **concerns nothing less than self-preservation and self-perpetuation x x x the advancement of which may even be said to predate all governments and constitutions.** As a matter of fact, **these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.** If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come—generations which stand to inherit nothing but parched earth incapable of sustaining life.”

193. The *Oposa* Complaint raised actual damages to the environment such as massive erosion, water shortage and salination, and the “greenhouse effect,” to name a few, all of which Petitioners therein attributed to their Respondents’ grant of Timber Licensing Agreements for commercial logging. They also raised foreseen damages should the assailed act be continued—that “the Philippines will be bereft of forest resources after the end of this ensuing decade, if not earlier.”

194. The Petition, as well as the others in this consolidated matter, pointed out the actual, ongoing, and foreseen damages of R.A. No. 10533 to children, parents, and education workers nationwide. The old ten-year structure has displaced 2.3 million school-age children (five to 15 years old) per DepEd’s own enrolment figures, even despite the allegations that government is “close to achieving its goal of closing the resource gaps” and the “phenomenal” increase in education spending. Such claims are recklessly overbroad and irrational, and will be proven untrue if one studies historical and current realities in public schools, both basic and tertiary.¹²²

¹²² Paragraphs 69 to 74 of the Petition

195. The new education structure as mandated by R.A. No. 10533 has displaced thousands of education workers in the tertiary level even as it targets to displace students from the Kindergarten to senior high school level, per the prospects of K to 12 as reported by DepEd itself and following the deadly combination of insufficient funding for public education (admitted by Respondents in public statements and during congressional hearings and the K to 12 midterm report with respect to targets in enrolment, teacher training, voucher recipients, and others, for instance) and various forms of “public-private partnerships.”

196. The Petition also showed the correlation between and the K to 12 Law and its administrative issuances on one hand and the said damages on the other is apparent. For one, the massive loss and reduction of employment, income, benefits, and status of teaching and non-teaching employees in the tertiary level follow from the reduction of subjects brought by the new structure in basic education.

197. A cause of action therefore exists in this case, as it is present in *Oposa*, despite the fact that the constitutional provisions invoked as bases for Petitioners’ rights are found outside the Bill of Rights and previously regarded as not self-executing.

198. Considering *Oposa*, the political question doctrine as a ground for dismissal does not apply. The Petition bears the issue of the enforcement of several rights as opposed to the issue of mere policy formulation as framed by Respondents in their Comment.

199. Secondly, executive immunity, granting that Respondent Aquino indeed “enjoys” it, should not be a ground to drop him as Respondent because the privilege does not mean that anyone injured by the Chief Executive’s acts is entirely without recourse. Neither does it mean that the Judiciary cannot rule on the legality of his acts.

200. It was previously argued that while the Chief Executive cannot be sued for damages, his acts may be examined by the SC to determine the issue of their legality. In other words, the President may not be held liable for damages due to his performance of official acts (that is, he is “nonliable”), but he can be sued for the purpose of securing a ruling on the legality of his acts (that is, he is not “nonsuable”).¹²³

201. Fourth, cases of constitutionality and grave abuse of discretion concerning the acts of the President do not require the Court to determine

¹²³ *W. Cameron Forbes, et al. vs. Chuoco Tiaco and A. S. Crossfield*, G.R. No. L-6157, 30 July 1910

his administrative, civil, or criminal liability. The privilege of executive immunity, aimed to protect the President from personal burdens arising from suits, therefore does not apply.

202. Far from aiming for “dramatic effect” as hollowly imputed to them by the Solicitor General, Petitioners impleaded the President of the Philippines because he enacted a blatantly unconstitutional law. His being made a Respondent to the Petitions is but a necessary consequence of his treatment of the rights to education, labor, public participation, and others as merely secondary to the neoliberal demands of global economy, his making the rights of Filipino children—present and future—as well as parents and education workers as only subordinate to the business interests of the private sector—all of which are the express aims of the K to 12 Law.

203. Petitioners also note that the Honorable Court in its previous decisions allowed cases wherein the Chief Executive is the main Respondent. In *Araullo v. Aquino*, in fact, the Court struck down the Disbursement Acceleration Program, another “flagship” program of Respondent Aquino’s. Said case began and ended with President Aquino as main Respondent, despite the protestations of the OSG grounded on “executive immunity.”

204. Finally, Petitioners wish to emphasize that the K to 12 Program is attributable to Respondent Aquino as his own act. He is not only the President, but also the head of the ruling party dominant in the Fifteenth and Sixteenth Congresses responsible for churning out the laws covering all phases of the K to 12 Program. He is also the Chief Executive whose subordinates or alter-egos in DepEd and CHED promulgated the assailed administrative issuances. He is the very individual in government to whom K to 12 can eventually be traced, who has touted it as his flagship program for so-called education reform, from his very first State of the Nation Address.

RELIEF

Petitioners replead the foregoing assertions in support of the injunctive relief prayed for, they being entitled to it as citizens and taxpayers whose children stand to be adversely affected by the assailed law and rules.

R.A. No. 10533 and K to 12 are unconstitutional and downright invalid because they violate the people’s right to education, right to choose a profession, provisions on the importance of nationalism in education,

provisions on the State's duty to promote a self-reliant and independent national economy, and other related provisions of the Philippine Constitution, being a matter of public interest as well as of transcendental importance affecting generations yet to come, there is a compelling necessity to grant the relief prayed for.

At present, respondents are continuing to implement and enforce R.A. No. 10533 by railroading the implementation of the two-year senior high school scheme.

To deny petitioners the injunctive writ would allow continuous violation of their fundamental rights and the fundamental rights of the Filipino people that would definitely cause grave and irreparable injury which would probably work injustice to petitioners' children and our people's children and would render the relief prayed for illusory and ineffectual.

PRAYER

WHEREFORE, petitioners respectfully pray that after due consideration of the present petition, the Honorable Court declare RA 10533 legislated and implemented by the Philippine government, UNCONSTITUTIONAL AND INVALID and to permanently enjoin its implementation.

Quezon City for Manila, 3 May 2016.

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EXPLANATION OF SERVICE

This Reply was served upon the above parties by registered mail due to personnel, time, and distance constraints.