REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

ALEXANDER ADONIS, VERAFILES INCORPORATED, represented by its President, ELLEN TORDESILLAS, MA. GISELA ORDENES-CASCOLAN, H. HARRY L. ROQUE, JR., ROMEL R. BAGARES, AND GILBERT T. ANDRES,
Petitioners,

-versus-

G.R. No. 203378
For: Certiorari and Prohibition, with Prayer for a Preliminary Prohibitory Injunction and/ or Temporary Restraining Order

THE EXECUTIVE SECRETARY, THE DEPARTMENT OF BUDGET AND MANAGEMENT, THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, THE NATIONAL BUREAU OF INVESTIGATION, THE PHILIPPINE NATIONAL POLICE, AND THE INFORMATION AND COMMUNICATIONS TECHNOLOGY OFFICE-DEPARTMENT OF SCIENCE AND TECHNOLOGY,
Respondents.
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AMENDED PETITION FOR CERTIORARI AND PROHIBITION, WITH PRAYER FOR THE ISSUANCE OF A WRIT OF PROHIBITORY INJUNCTION AND/ OR TEMPORARY RESTRAINING ORDER

NATURE OF THE ACTION

This is a Petition for Certiorari and Prohibition, with a Prayer for a Preliminary Prohibitory Injunction and/or a Temporary Restraining Order, asking the Honorable Court to declare that Republic Act No. 10175 or the "Cybercrime Prevention Act of 2012," and Article 355 of Act No. 3815 or the "Revised Penal Code" are unconstitutional.

Petitioners also ask the Honorable Court, pending a final resolution on this Petition, to issue a preliminary prohibitory injunction and/or a Temporary Restraining Order, prohibiting the Public Respondents, and anyone acting under their authority, stead, or behalf, from implementing R.A. 10175.

TIMELINESS OF THE PETITION

1) On 12 September 2012, President Benigno Simeon Aquino III signed REPULIC ACT NO. 10175 ("R.A. 10175") or otherwise known as "CYBERCRIME PREVENTION ACT OF 2012." (A copy of RA 10175 is attached as ANNEX A). On the same date, R.A. 10175 was published in the Official Gazette.

2) Under Section 31 of R.A. 10175, it shall take effect fifteen (15) days after the completion of its publication in the *Official Gazette.* Hence, R.A. 10175 took effect on 27 September 2012.

3) Under Rule 65, Petitioners have sixty (60) days from 27 September 2012, within which to file this Petition. Hence, Petitioners have until 26 November 2012 within which to file this Petition. Petitioners therefore are filing the instant action on time. The corresponding docket and other lawful fees and deposit for costs are paid simultaneously with the filing of this Petition.

4) Petitioners respectfully submit that since R.A. 10175 is an official act of Congress, and of the Executive, it is subject to judicial notice under Section 1, Rule 129 of the Rules of Court, such that there is no need for the submission in the instant proceeding of a certified true copy of R.A. 10175.

PARTIES

The **Petitioners** are:

5) **ALEXANDER ADONIS,** is of legal age, Filipino, and a broadcast journalist currently based in General Santos City as an anchorman for *SocSarGen Broadcasting Network*. In April 2007, while working as a commentator for the Davao City-based *Bombo Radyo*, he was sentenced to four years and six months in prison in a libel case filed against him by then Davao representative (and later Speaker of the House) Prospero Nograles.

Nograles brought the suit against Adonis in 2001 over a report by the radio broadcaster which alleged, citing newspaper reports, that the congressman was seen running naked in a Manila Hotel shortly after the husband of a woman he was allegedly having an affair with caught them in bed. While serving time, Adonis became the author of a Communication filed before the Human Rights Committee entitled *Alexander Adonis v. The Philippines* and denoted as Communication No. 1815/2008, in which he questioned his imprisonment for libel as a violation of his right to free expression. Subsequently, the UN Human Rights Committee would issue a View in his case, where the international rights body declared that criminal libel in the Philippines conflicts with the country's obligations under Art. 19 of the International Covenant on Civil and Political Rights (ICCPR).

6) **VERAFILES INCORPORATED, represented herein by its President, ELLEN TORDESILLAS,** is a Corporation duly organized and existing under the laws of the Philippines, with principal office at Room 405, Columbian

Building, 160 West Avenue, Quezon City**. Verafiles Incorporated** publishes online (http://verafiles.org) and also contributes investigative and other pieces to various print and online publications in the Philippines. Ms. Tordesillas is of legal age, Filipino, and a veteran journalist whose political blog, ellentordesillas.com, is one of the country's top political blogs. She also writes columns for the English-language broadsheet *Malaya* and the vernacular tabloid *Abante*. She has a twitter handle @ellentordesillas and a facebook account under the same name.

7) **MA. GISELA ORDENES-CASCOLAN,** is of legal age, Filipino, an active blogger (http://lalaordenes.wordpress.com) who also regularly tweets through @LalaOrdenes. She also has accounts on the social media sites Facebook and Google+.

8) The Petitioners below, filing the instant Petition in *propria personae*, are members of the *Roque and Butuyan Law Offices*. They are members in good standing of the Integrated Bar of the Philippines, who, as officers of the court, and as taxpayers and citizens, have a direct interest in the faithful adherence to constitutional processes. They are suing as members of the Bar pursuant to their oath to uphold the Fundamental Law of the land, and as citizens suing on an issue of *transcendental importance*, that of upholding, inter alia, the Constitutional right to freedom of speech, of expression, and of the press.

4.1 **H. HARRY L. ROQUE, JR.;**

4.3 ROMEL R. BAGARES;

4.5 GILBERT T. ANDRES.

Moreover, Petitioner H. Harry L, Roque writes a weekly column for the Manila-based English-language broadsheet *Manila Standard Today* (http://manilastandardtoday.com), runs a blog at http://harryroque.com and a twitter handle @profharryroque.

Petitioner Romel R. Bagares maintains two blogs, found at http://enkapsis.wordpress.com and http://sanpedrostreet.wordpress.com and writes a weekly column for the Iloilo City-based newspaper, *The News Today*, which also has an online presence at http://iloilonewstoday. His twitter handle is @Dooyeweerdian.

Petitioner Gilbert T. Andres tweets through @GilbertAndres77 and is also a legal officer for the Media Defence Southeast Asia (MD-SEA), a regional non-governmental organization of lawyers defending and promoting freedom of expression across Southeast Asia. Petitioners Roque, Bagares and Andres are also avid users of the social media network site Facebook.

9) All Petitioners are also suing as taxpayers, hereby questioning the disbursement of public funds for the implementation of R.A. 10175, since this law is unconstitutional. They are also bringing this suit as citizens who stand to be directly injured by the unconstitutional nature of the law in question, inasmuch as it infringes on their right to freely express their ideas and opinions on the raging issues of the day through various forms of social media and/or online and print publications.

10) All of the Petitioners may be served with pertinent papers and processes through the undersigned counsel, Roque and Butuyan Law Offices, at

Unit 1904 Antel 2000 Corporate Centre, 121 Valero Street, Salcedo Village, Makati City.

The **Public Respondents** are the following public officials:

11) **THE HON. EXECUTIVE SECRETARY PAQUITO OCHOA, JR.** is being sued in his official capacity as Executive Secretary to the President, and as the representative of the Executive Department that will implement and execute RA 10175. He may be served with summons and notices of this Honorable Court, as well as all other papers and processes, at the Office of the Executive Secretary, Malacañang Palace, Manila.

12) **THE HON. FLORENCIO B. ABAD,** is being sued in his official capacity as Secretary of the DEPARTMENT OF BUDGET AND MANAGEMENT (hereinafter DBM), a department charged with the release of funds for the implementation of R.A.10175. He may be served with summons and other papers and processes of this Honorable Court at the DBM, Gen. Solano St., San Miguel, Manila.

13) **THE HON. LEILA M. DE LIMA,** is being sued in her official capacity as Secretary of the DEPARTMENT OF JUSTICE (hereinafter DOJ), a department charged under R.A. 10175 of issuing an order to restrict or block access to such computer data that is *prima facie* found to be in violation of the provisions of R.A. 10175. Also, the DOJ, *inter alia*, is charged under R.A. 10175 for formulating the necessary rules and regulations for the effective implementation of R.A. 10175. Moreover, under the DOJ is the National Bureau of Investigation--which is charged under R.A. 10175 for the efficient and effective law enforcement

of the provisions of the said law. She may be served with summons and other papers and processes of this Honorable Court at the DOJ, Padre Faura, Manila.

14) **THE HON. MANUEL ROXAS III,** is being sued in his capacity as Secretary of the DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT (hereinafter DILG). The DILG, *inter alia*, is charged under R.A. 10175 for formulating the necessary rules and regulations for the effective implementation of R.A. 10175. Also, under the DILG is the Philippine National Police--- which is charged under R.A. 10175 for the efficient and effective law enforcement of the provisions of the said law. He may be served with summons and other papers and processes of this Honorable Court at the DILG, A. Francisco Gold Condominium II, EDSA cor. Mapagmahal St, Diliman, Quezon City.

15) **THE HON. NONNATUS CAESAR ROJAS**, is being sued in his capacity as the Director of the NATIONAL BUREAU OF INVESTIGATION (hereinafter "NBI")--- which is charged under R.A. 10175 for the efficient and effective law enforcement of the provisions of the said law. He may be served with summons and other papers and processes of this Honorable Court at the NBI Building, Taft Avenue, Ermita, Manila.

16) **THE HON. NICANOR BARTOLOME**, is being sued in his capacity as the Chief of the PHILIPPINE NATIONAL POLICE (hereinafter "PNP")--- which is charged under R.A. 10175 for the efficient and effective law enforcement of the provisions of the said law. He may be served with summons and other papers and processes of this Honorable Court at the PNP National Headquarters Camp General Crame, Quezon City, Metro Manila.

17) **THE HON. DENIS F. VILLORENTE, is** being sued in his capacity as the Office-in Charge of the Office of the Director General, INFORMATION AND COMMUNICATIONS TECHNOLOGY OFFICE-DEPARTMENT OF SCIENCE AND TECHNOLOGY (hereinafter "ICTO-DOST"). The ICTO-DOST, *inter alia*, is charged under R.A. 10175 for formulating the necessary rules and regulations for the effective implementation of R.A. 10175. He may be served with summons and other papers and processes of this Honorable Court at the ICTO- National Computer Center Bldg. C.P. Garcia Avenue, University of the Philippines, Diliman, Quezon City.

STATEMENT OF FACTS

18) On 8 December 1930, Act No. 3185 otherwise known as the Revised Penal Code was signed into law.

19) The Revised Penal Code penalizes libel committed by means of writing or similar means, to wit:

> **Article 355.** *Libel means by writings or similar means.* - A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prision correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

20) On 23 October 1986, the Philippines ratified the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR provides that:

> **Article 19**
>
> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

21) On 02 February 1987, the 1987 Philippine Constitution was ratified. Article III, Section 4 of the 1987 Constitution provides:

> **Section 4.** No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

22) The Philippines ratified the Optional Protocol to the ICCPR on August 22, 1989, which meant its acceptance of the individual complaints mechanism provided for by the Optional Protocol.

23) In a communication dated 03 July 2008 the Petitioner Alexander Adonis filed against the Philippines before the United Nations Human Rights Committee (UNHRC), he alleged that the Philippines violated Article 19 of the International Covenant on Civil and Political Rights (ICCPR). He also alleged,

inter alia, that his conviction and imprisonment for libel under Article 355 of the Philippine Revised Penal Code constitutes an unlawful restriction of his right to freedom of expression under Article 19 of the ICCPR. The communication is entitled ***Alexander Adonis v. The Philippines*** and designated as Communication No. 1815/2008.

24) On 26 October 2011, the UNHRC expressed its View on ***Alexander Adonis vs. Republic of the Philippines***.[1] In its View, the UNHRC declared that the imprisonment imposed on Mr. Adonis for libel under the Philippine Revised Penal Code is *"incompatible with Article 19, paragraph three of the International Covenant on Civil Political Rights,"* or freedom of expression. Further, the UNHRC View expressed that the Philippines is *"also under an obligation to take steps to prevent similar violations occurring in the future, including by reviewing the relevant libel legislation."* (Attached as **ANNEX B** is a copy of the UNHRC View on ***Adonis v. The Philippines***.)

25) On 04 June 2012 and on 05 June 2012, and despite the UNHRC view on ***Adonis v. The Philippines***, the House of Representatives and the Senate, respectively, passed Republic Act No. 10175, or otherwise known as "CYBERCRIME PREVENTION ACT OF 2012." (A copy of RA 10175 is attached as **ANNEX A**).

26) On 12 September 2012, despite the UNHRC view on ***Adonis v. The Philippines***, President Benigno Simeon Aquino III signed into law R.A. 10175.

27) Section 4(c)(4) of RA 10175 provides that:

[1] Communication No. 1815/2008.

SEC. 4. *Cybercrime Offenses.* – The following acts constitute the offense of cybercrime punishable under this Act:

(c) Content-related Offenses:

1) Cybersex. — The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.

(2) Child Pornography. — The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: *Provided,* That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.

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4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

28) Section 5 of RA 10175 provides that:

SEC. 5. *Other Offenses.* – The following acts shall also constitute an offense:

(a) Aiding or Abetting in the Commission of Cybercrime. – Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable.

(b) Attempt in the Commission of Cybercrime. — Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable.

29) Section 6 of RA 10175 provides that:

SEC. 6. All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided,* That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

30) Section 7 of RA 10175 provides that:

> SEC. 7. *Liability under Other Laws.* – A prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code, as amended, or special laws.

31) Section 19 of RA 10175 provides that:

> SEC. 19. *Restricting or Blocking Access to Computer Data.* – When a computer data is *prima facie* found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data.

32) Moreover, Section 27 of RA 10175 lays down the appropriations for the implementation of RA 10175, to wit:

> SEC. 27. *Appropriations.* – The amount of Fifty million pesos (PhP50,000,000_00) shall be appropriated annually for the implementation of this Act.

GROUNDS FOR THE PETITION

33) This Petition is for Certiorari and Prohibition. Petitioners respectfully contend that Article 355 of Act No. 3815 or the "Revised Penal Code," and numerous sections of R.A. 10175 are unconstitutional, specifically the following five (5) sections:

> **SEC. 4. *Cybercrime Offenses*.** – The following acts constitute the offense of cybercrime punishable under this Act:
>
> (c) Content-related Offenses:
>
> 1) Cybersex. – The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.
>
> (2) Child Pornography. – The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: *Provided,* That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.

xxx xxx xxx

4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

SEC. 5. ***Other Offenses.*** – The following acts shall also constitute an offense:

(a) Aiding or Abetting in the Commission of Cybercrime. – Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable.

(b) Attempt in the Commission of Cybercrime. — Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable.

SEC. 6. All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided,* That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

SEC. 7. ***Liability under Other Laws.*** – A prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code, as amended, or special laws.

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SEC. 19. ***Restricting or Blocking Access to Computer Data. —*** When a computer data is *prima facie* found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data.

34) Petitioners also do not have at their disposal any appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, except the instant Petition for Certiorari, and Prohibition, and Mandamus with Prayer for

the Issuance of a Writ of Preliminary Prohibitory Injunction and/or Temporary Restraining Order.

35) The acts of Respondents, if not immediately restrained or enjoined, will cause grave and irreparable injury to Petitioners as journalists, taxpayers, Filipino citizens, and/or members of the legal profession, and the entire Filipino people as Article 355 of Act No. 3815 or the "Revised Penal Code" and R.A. 10175 trample on Constitutional rights such as the right to freedom of speech, of expression, and of the press, the right against double jeopardy, and right to the equal protection of the laws.

36) For the same reasons, the commission and continuance of the acts complained of during the pendency of this petition will work injustice to Petitioners, and to the people of the Republic of the Philippines. Petitioners pray for the exemption from the posting of a bond in view of the nature of the instant petition which is anchored on the following grounds:

PROCEDURAL MATTERS

I.
PETITIONERS HAVE STANDING TO FILE THE INSTANT PETITION FOR CERTIORARI AND PROHIBITION

II.
THE CONTROVERSY IS SUFFICIENTLY RIPE FOR THE HIGH COURT'S ADJUDICATION

III.
THE FILING OF THE INSTANT PETITION DOES NOT VIOLATE THE HIERARCHY OF COURTS, GIVEN THE URGENCY AND THE NATURE OF THE ISSUES INVOLVED

IV.

THE PETITION INVOLVES MATTERS OF PUBLIC INTEREST AND *TRANSCENDENTAL IMPORTANCE* SUCH AS WOULD JUSTIFY A RELAXATION OF PROCEDURAL REQUIREMENTS FOR CONSTITUTIONAL ADJUDICATION

SUBSTANTIVE MATTERS

(GROUNDS FOR THE PETITION)

V.

ARTICLE 355 OF THE REVISED PENAL CODE IS UNCONSTITUTIONAL AS IT STIFLES FREEDOM OF EXPRESSION AND ANY PROSECUTION FOR LIBEL UNDER THE REVISED PENAL CODE, OR UNDER R.A. 10175 WHICH INCORPORATES THE SAID ARTICLE BY REFERENCE IS A CONTINUING VIOLATION OF PHILIPPINE STATE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS (ICCPR) AS THE UN HUMAN RIGHTS COMMITTEE HAS SO HELD IN ITS VIEW ON *ADONIS V. REPUBLIC OF THE PHILIPPINES*, WHERE THE COMMITTEE STATED THAT CRIMINAL LIBEL IN THE REVISED PENAL CODE IS INCOMPATIBLE WITH FREEDOM OF EXPRESSION.

VI.

SECTION 4(C)(1), SECTION 4(C)(2), SECTION 4(C)(4) AND SECTION 5 OF R.A. 10175 VIOLATE THE CONSTITUTIONAL RIGHT TO FREEDOM OF SPEECH, OF EXPRESSION, AND OF THE PRESS ENSHRINED IN ARTICLE III, SECTION 4, OF THE CONSTITUTION AS SAID SECTIONS OF THE LAW ARE *VAGUE* AND *OVERBROAD*.

VII.

SECTION 4(C)(2) AND SECTION 6 OF R.A. 10175 VIOLATE THE EQUAL PROTECTION CLAUSE ENSHRINED IN ARTICLE III, SECTION 1, OF THE CONSTITUTION--- SINCE IT ARBITRARILY INCREASES THE PENALTY IMPOSED ON "CYBER CHILD PORNOGRAPHY" AND "CYBER LIBEL" AS COMPARED TO THE PENALTY FOR ORDINARY CHILD PORNOGRAPHY AND ORDINARY LIBEL—WITHOUT ANY VALID LEGAL BASIS FOR SUCH A HIGHER PENALTY.

VIII.

SECTION 7 OF R.A. 10175 VIOLATES THE CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY ENSHRINED IN ARTICLE III,

SECTION 21 OF THE CONSTITUTION AS IT PLACES AN ACCUSED IN DOUBLE JEOPARDY.

IX.

SECTION 19 OF R.A. 10175 VIOLATES THE CONSTITUTIONAL PRINCIPLE OF SEPARATION OF POWERS AS IT DELEGATES TO THE DOJ WHAT IS PROPERLY A JUDICIAL FUNCTION.

X.

THE PRESUMPTION OF CONSTITUTIONALITY DOES NOT APPLY TO R.A. 10175 SINCE IT VIOLATES CONSTITUTIONALLY PROTECTED FUNDAMENTAL RIGHTS.

DISCUSSION

A. PROCEDURAL MATTERS

I. PETITIONERS HAVE STANDING TO FILE THE INSTANT PETITION FOR CERTIORARI AND PROHIBITION.

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37) Petitioners as Filipino citizens, taxpayers, as concerned citizens, and as either--- journalists, bloggers, or social network netizens--- have standing to file the instant suit. In a host of jurisprudence *locus standi* means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the act being challenged.[2] Otherwise stated, a proper party is one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of.[3] Thus, for a party to have personal standing, he need only prove, first, injury to his right or interest[4], and second, a "fairly traceable" causal connection between the claimed injury and the challenged conduct.[5]

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[2] Tankiko v. Cezar, G.R. No. 131277, February 2, 1999.
[3] ISAGANI CRUZ, CONSTITUTIONAL LAW 25 (2000), citing Ex Parte Levitt, 303 US 633.
[4] Tankiko v. Cezar, G.R. No. 131277, February 2, 1999; CRUZ, *Id.*,at 25; Duke Power Co. v. Carolina Environmental Study Group, 438 US 59 (1978).
[5]Duke Power Co. v. Carolina Environmental Study Group, 438 US 59 (1978).

38) With regard to the first requisite, which requires *injury in fact*,[6] there is no rigid rule as to what may constitute such injury. It may refer to aesthetic or environmental injury[7] or pertain to a "spiritual stake" in the values of the Constitution,[8] and may be held to exist when the assailed administrative ruling entail future loss of profits.[9] Indeed, even the mere fact that many people suffer the same injury claimed does not preclude a finding that the requisite standing exists.[10] As for the second requisite, it is complied with when the Petitioners show that there is a substantial likelihood that the relief requested will redress the claimed injury.[11] Even if the line of causation between the injury and the conduct is attenuated, the existence of "an identifiable trifle" is sufficient for meeting this requisite.[12]

39) Petitioners stand to suffer directly from the "chilling effect" of an unconstitutional imposition as the assailed law, whose provisions on cyber libel are so vague and so overbroad that these can be applied arbitrarily on all users of social media, Petitioners included.

40) In the instant petition, Petitioners assert their *public rights* as citizens to be able to freely express their views on the raging issues of the day against the the Constitutionally-infirm portions of R.A. 10175. Thus their standing as citizens

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[6] Association of Data Processing Service Organizations v. Comp., 397 US 150 (1970) in RONALD ROTUNDA, MODERN CONSTITUTIONAL LAW: CASES AND NOTES 1054 (3rd ed., 1989) [Hereinafter, ROTUNDA].
[7] JOHN E. NOWAK AND RONALD ROTUNDA, CONSTITUTIONAL LAW 78 (4th ed., 1991), citing Sierra Club v. Morton, 405 U.S. 727 (1972).[Hereinafter, NOWAK & ROTUNDA].
[8] *Id.*, at 77
[9] Association of Data Processing Service Organizations v. Comp., 397 US 150 (1970), cited in ROTUNDA, *supra* note 13, at 1054
[10] Sierra Club v. Morton, 405 U.S. 727 (1972) , cited in NOWAK AND ROTUNDA, *supra* note 14, at 78.
[11] Duke Power Co. v. Carolina Environmental Study Group, 438 US 59 (1978).
[12] ROTUNDA, *supra* note 6, at 1055, citing U.S. v. SCRAP, 412 U.S. 669 (1973).

is founded on this unassailable constitutional entitlement. As this Honorable Court held in the landmark case *of Francisco, Jr. et al v. House of Representatives:*

> ….In fine, when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.[13]

41) Moreover, the annual appropriations for the implementation of RA 10175, amounting to Fifty million pesos (PhP50,000,000.00) entails the expenditure of public funds. Petitioners therefore raise as well their right as taxpayers to enjoin the implementation of RA 10175 for its unconstitutionality. Public money should not be wasted on a statute that is void.

II. THE CONTROVERSY IS SUFFICIENTLY RIPE FOR THE HIGH COURT'S ADJUDICATION

42) The principle of ripeness is premised on the doctrine that, for the courts to act, there must be an actual case or controversy involving a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication.[14] Under this principle, a suit is not ripe where it was brought too early.[15] The principle is underlined by the fact that, until the controversy becomes concrete and focused, the court would find it difficult to evaluate the practical merits of each party.[16] However, the requirement of ripeness is not

[13] Ernesto V. Francisco Jr., et al, v. House of Representatives, GR. No. 160261, Nov. 10, 2003.
[14] CRUZ, *supra* note 10, at 23. See also International Longshoremen's and Warehousemen's Union, Local 37 v. Boyd, 347 US 222 (1954), quoted in ROTUNDA, *supra* note 13, at 1026-1027.
[15] NOWAK & ROTUNDA, *supra* note 7, at 68
[16] *Id*.

bound to any hard and fast rules,[17] and the degree of ripeness required may vary depending on the nature of the constitutional problem involved.[18]

43) The controversy that compelled the Petitioners to file the instant petition before the Honorable Court is sufficiently ripe for adjudication. It has been held that where a party will sustain immediate injury and such injury would be redressed by the relief requested, then the case involved would already satisfy the requirement of ripeness.[19]

44) The instant case involves Petitioners who question the way Respondents have flouted the requirements laid down by law and established jurisprudence, and which would result in unfair and illegal disbursement of public funds. The acts of Respondents have both been accomplished and are being threatened to be accomplished, to the detriment of Petitioners and the nation. Such already constitutes a justiciable controversy according to jurisprudential requirements, as it involves "a definite and concrete dispute touching on the legal relations of parties having adverse legal interests."[20]

III. THE FILING OF THE INSTANT PETITION DOES NOT VIOLATE THE HIERARCHY OF COURTS, GIVEN THE URGENCY AND THE NATURE OF THE ISSUES INVOLVED.
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45) It may be argued that the instant Petition should be dismissed for being in violation of the principle of the hierarchy of courts. However, in Article

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[17] *Id*.
[18] Barrett 125, citing United Public Workers v. Mitchell, 330 US 75 (1947) and Adler v. Board of Education, 342 US 485 (1952).
[19] Duke Power Co. v. Carolina Environmental Study Group, 438 US 59 (1978), quoted in ROTUNDA, *supra* note 6, at 1053
[20] Guingona Jr. v. Court of Appeals, 354 Phil. 415, 426, July 10, 1998

VIII, Section 5, paragraph 2 (a) of the Constitution, it is explicit that the Supreme Court has jurisdiction in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

46) Thus, it has been held that where a case raises constitutional issues of transcendental importance to the public and involves a petition for certiorari and prohibition within the court's original jurisdiction within the Constitution, the Court may exercise primary jurisdiction over said case though it apparently failed to observe the rule of hierarchy of courts.[21] That a case involving constitutional issues regarding treatment of cooperatives and the need for speedy disposition of cases would, for instance, justify the Court's taking cognizance over a case invoking its primary jurisdiction.[22]

47) Petitioners respectfully submit that the instant petition involves constitutional issues of transcendental importance as well as of compelling circumstances that would merit a latitudinarian view of the principle of hierarchy of courts.

IV. THE PETITION INVOLVES MATTERS OF PUBLIC INTEREST AND TRANSCENDENTAL IMPORTANCE SUCH AS WOULD JUSTIFY A RELAXATION OF ANY PROCEDURAL REQUIREMENT FOR CONSTITUTIONAL ADJUDICATION.
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[21] Chavez v. Public Estates Authority, G.R. No.133250, July 9, 2002.
[22] Philippine Rural Electric Cooperatives Association v. Secretary, G.R. No.143076, June 10, 2003.

48) The Honorable Court has repeatedly and consistently affirmed that the Court may brush aside technicalities of procedure where a rigid adherence to the rules would prejudice substantial justice,[23] where the issues are of first impression and entail interpretation of key provisions of the Constitution and law,[24] or where the case involves matters of transcendental importance.[25]

49) Unquestionably, the Court has the power to suspend procedural rules in the exercise of its inherent power, as expressly recognized in the Constitution, to promulgate rules concerning 'pleading, practice and procedure in all courts. In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules.[26]

50) As was held by this Honorable Court in the above-cited cases, the Court, in the exercise of its sound discretion, may brush aside procedural barriers and take cognizance of a case in view of the paramount importance and the constitutional significance of the issues raised. Thus, as the issues raised by the Petitioners in the instant case are of paramount public interest, the Petitioners humbly pray that the Honorable Court brush aside procedural barriers, if any, in taking cognizance of this case.

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[23] Solicitor-General v. Metropolitan Manila Authority, G.R. No.102782, December 11, 1991.
[24] Philippine International Air Terminals Co., G.R. No.155001, May 5, 2003.
[25] Defensor-Santiago v. Comelec, G.R. No.127325, March 19, 1997. See KMU v. Garcia, G.R. No.115381, December 23, 1994 (standing); Kilosbayan v. Guingona, G.R. No.113375, May 5, 1994 (standing); Kilosbayan v. Morato, G.R. No.118910, November 16, 1995 (standing); Solicitor-General v. Metropolitan Manila Authority, G.R. No.102782, December 11, 1991. (standing, propriety of prohibition); Osmena v. Comelec, G.R. No.100318, July 30, 1991 (standing, etc.); Daza v. Singson, G.R. No.86344, December 21, 1989 (propriety of remedy); Association of Small Landowners in the Philippines v. Secretary, G.R. No.79310, July 14, 1989; Philippine International Air Terminals Co., G.R. No.155001, May 5, 2003 (standing), particularly J. Panganiban, sep.op.
[26] Solicitor-General v. Metropolitan Manila Authority, G.R. No.102782, December 11, 1991.

B. SUBSTANTIVE MATTERS

(GROUNDS FOR THE PETITION)

V. ARTICLE 355 OF THE REVISED PENAL CODE IS UNCONSTITUTIONAL AS IT STIFLES FREEDOM OF EXPRESSION AND ANY PROSECUTION FOR LIBEL UNDER THE SAID LAW OR UNDER R.A. 10175 WHICH INCORPORATES THE SAID ARTICLE BY REFERENCE IS A CONTINUING VIOLATION OF PHILIPPINE STATE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS (ICCPR) AS THE UN HUMAN RIGHTS COMMITTEE HAS SO HELD IN ITS VIEW ON *ADONIS V. REPUBLIC OF THE PHILIPPINES*, WHERE THE COMMITTEE STATED THAT CRIMINAL LIBEL IN THE REVISED PENAL CODE IS INCOMPATIBLE WITH FREEDOM OF EXPRESSION.

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51) Article 355 of the Revised Penal Code provides-

> Libel means by writings or similar means. — A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prision correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

52) The United Nations Human Rights Committee recently declared that the Revised Penal Code's provisions penalizing libel is "incompatible with Article 19, paragraph three of the International Covenant on Civil Political Rights," which pertains to the freedom of expression.[27]

53) Recalling its General Comment No. 34, the UN body stressed that defamations laws should not stifle freedom of expression. It also emphasized that "imprisonment is never an appropriate penalty."

54) At present, the penalty for libel under Article 355 of the Revised Penal Code may include imprisonment by prision correccional in its minimum and medium periods, in addition to or in lieu of a fine. It is clear that one prosecuted for libel under the said law may face imprisonment which is in stark contrast to the assertion of the UN body asserted that "imprisonment is never an appropriate penalty."

55) Moreover, the UN body reiterated that "(P)enal defamation laws should include defense of truth," and

56) **"[In] comments about public figures, consideration should be given to avoiding penalties or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defense. State parties should consider the decriminalization of libel**."

[27] See attached as **ANNEX B.**

57) The UNHRC's view was expressed in connection with a complaint filed with it by Davao City broadcast journalist Alexander Adonis, who spent two years in jail after he was convicted of libeling former Speaker of the House Prospero Nograles.

58) Adonis's crime was reading and dramatizing over his popular radio program a news report that then Congressman Nograles was seen running naked in the corridors of a hotel in the city after he was caught in bed by the husband of the woman who was said to the legislator's mistress. The incident entered the collective memory of the citizens of Davao City as the "Burlesque King" scandal.

59) After serving two years in prison Adonis questioned before the UNHRC, among other things, whether criminal libel is compatible with the freedom of expression protected under Art 19 of the ICCPR, to which the Philippines is a state party.

60) And the UNHRC's answer is a resounding no.

61) Again, to reiterate, in ruling in favor of Adonis, the UN Body ruled that Philippine criminal libel law was inconsistent with freedom of expression. The Committee recalled its General Comment No. 34 which reads: "Defamations laws should not x x x stifle freedom of expression. … Penal defamation laws should include defense of truth…"

62) In addition, according to its General Comment No. 34, on the question of comments about public figures, consideration should be given to

avoiding penalties or otherwise rendering unlawful untrue statements that have been published in error but without malice. "In any event," so said the said Comment, "a public interest in the subject matter of the criticism should be recognized as a defense. State parties should consider the decriminalization of libel."

63) The UNHRC is a treaty monitoring body created under an optional protocol to the ICCPR with the power to declare that a State party to the Convention is in breach of its obligations under the covenant.

64) The *Adonis View* is evidence of a breach of Philippine state obligations under international law.

65) Under the 1987 Constitution, the Philippines adopts the generally accepted principles of international law which therefore form part of the law of the land. It is also axiomatic that all treaties are binding on the State party ratifying the same and must be performed by them in good faith.[28]

> ***Article 2***
>
> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

[28] Article 26, Vienna Convention on the Law of Treaties.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted. "

66) As a State party to the International Covenant on Civil and Political Rights, the Philippines has bound itself to fulfill the obligations under the Covenant. The relevant provision reads:[29]

67) Treaties such as the Covenant become part of the law of the land through transformation pursuant to the Constitution which provides that "no treaty or international agreement ***shall be valid and effective*** unless concurred in by at least two-thirds of all the members of the Senate."[30]

68) The Covenant and the Optional Protocol is such a treaty as it has been concurred in by at least two-thirds of all the members of Senate. Therefore the duties and obligations found under the Covenant are State obligations that form part of the "law of the land." Therefore by the force of the Constitution, ***both the Covenant and the Optional Protocol to the Covenant*** are "***valid and effective***" under the doctrine of transformation and form part of domestic law.[31]

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[29] Article 2, International Covenant on Civil and Political Rights [ICCPR].
[30] Article VII Section 21, 1987 Constitution.
[31] Pharmaceutical Health Care Association vs. Health Secretary Duque et al., G.R. No. 173034, October 9, 2007.

69) However even under the doctrine of incorporation these obligations continue to be valid and subsisting, as they form part of customary international law. As stated:

> Generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations. The classical formulation in international law sees those customary rules accepted as binding result from the combination [of] two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the opinion juris **sive necessitates** (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it. (Emphasis supplied)"[32]
>
> ….
>
> Generally accepted principles of international law" refers to norms of general or customary international law which are binding on all states, i.e., renunciation of war as an instrument of national policy, the principle of sovereign immunity, a person's right to life, liberty and due process, and *pacta sunt servanda,* among others. The concept of "generally accepted principles of law" has also been depicted in this wise…"[33]

70) The Philippines through the executive branch as the executor of the law therefore has the obligation to carry out the obligations under the Covenant as interpreted and decided by the Human Rights Committee, itself an organ created under the Covenant which is a duly ratified treaty.[34]

71) The Philippines recognized that the Human Rights Committee is competent to make such findings when it ratified the Optional Protocol to the Covenant on August 22, 1989. Therefore like any international instrument or treaty, this recognition is valid and effective and constitutes even more reason to

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[32] Mijares vs. Ranada, G.R. No. 139325, April 12, 2005, 455 SCRA 397.
[33] See note 19.
[34] Article 28 of the ICCPR.

accord great weight and validity to these findings of a breach of an international obligation under the Covenant.

72) The rules and standards laid down in the ICCPR and the Optional Protocol are indeed valid and effective because such was transformed by the concurrence to both instruments by the Philippine Senate as required by Article VII Section 21 of the Constitution.

73) Again, under the 1987 Philippine Constitution:

> Section 2. The Philippines renounces war as an instrument of national policy, ***adopts the generally accepted principles of international law as part of the law of the land*** and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations. (Emphasis supplied)[35]"

74) One of the generally accepted principles of international law is *pacta sunt servanda*[36]. State parties must comply with their treaty obligations in good faith. The Philippines has to comply with its treaty obligations in good faith, and at least take steps to fulfill these obligations. Under the doctrine of incorporation, the principle of *pacta sunt servanda* forms part of municipal law.

75) After recognizing the Committee's competence in matters regarding the obligations under the Covenant, the Philippines therefore has the obligation to exert reasonable efforts to fulfill obligations under the Covenant, part and parcel of which is Philippine compliance with the views of the Committee.

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[35] Article II, Section 2, 1987 Constitution.
[36] Tanada v. Angara, 338 Phil. 546, 592.

76) Therefore the View of the Committee in the *Adonis case* assailing criminal libel in the Revised Penal Code forms part of the law of the land, and the Philippines has an obligation to abide by the said View.

VI. SECTION 4(C)(1), SECTION 4(C)(4) AND SECTION 5 OF R.A. 10175 VIOLATE THE CONSTITUTIONAL RIGHT TO FREEDOM OF SPEECH, OF EXPRESSION, AND OF THE PRESS ENSHRINED IN ARTICLE III, SECTION 4, OF THE CONSTITUTION AS SAID SECTIONS OF THE LAW ARE *VAGUE* AND *OVERBROAD*.

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77) Section 4(c)(1), Section 4(c)(4) and Section 5 of R.A. 10175 violate the Constitutional right to freedom of speech, of expression, and of the press enshrined in Article III, Section 4, of the Constitution--- since said sections of R.A. 10175 are ***vague*** and ***overbroad***.

78) Section 4(c) paragraphs 1 and 4 of R.A. 10175 provide that:

> **SEC. 4.** ***Cybercrime Offenses***. – The following acts constitute the offense of cybercrime punishable under this Act:
>
> (c) Content-related Offenses:
>
> 1) Cybersex. – The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.
>
> xxx xxx xxx
>
> 4) Libel. – The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

79) On the other hand, Section 5 of R.A. 10175 provides that:

> **SEC. 5.** ***Other Offenses.*** – The following acts shall also constitute an offense:
>
> (a) Aiding or Abetting in the Commission of Cybercrime. – Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable.
>
> (b) Attempt in the Commission of Cybercrime. — Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable.

80) Section 4(c)(1), Section 4(c)(4) and Section 5 of R.A. 10175 clearly violate the Constitutional right to freedom of speech, of expression, and of the press enshrined in Article III, Section 4, of the Constitution, to wit:

> **Section 4.** No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

81) Section 4(c)(1), Section 4(c)(4) and Section 5 of R.A. 10175 violate the Constitutional right to freedom of speech, of expression, and of the press since these provisions are utterly ***vague and overbroad*** as these sections lack comprehensible standards to guide the authorities and citizens as to what acts constitute "libel" or "aiding or abetting in the commission of libel" or "attempted libel" in the cyberworld. As stated by the Honorable Court in *Estrada v. Sandiganbayan*[37] citing *People v. Nazario*:

> A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects - it violates due process for failure to accord persons,

[37] G.R. No. 148560, Nov. 19, 2001.

> especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[38]

82) "Cybersex" as penalized under the law has not been sufficiently defined. A citizen is left guessing as what, to cite an example, an indirect willful engagement in sexual activity with the aid of a computer, for favor or consideration, would be. Neither is he sufficiently informed as to what may constitute direct control of any lascivious exhibition of sexual organs with the aid of a computer, for favor or consideration, These acts are penalized under the law and the citizens are not afforded fair notice to allow them to refrain from engaging in such acts.

83) What constitutes a "lascivious" conduct under this provision is not specifically defined and leaves both the citizen and the law enforcer guessing; no clear standards are given for the determination of cybersex.

84) Even a married couple presently living in two different parts of the globe may be prosecuted under this provision for engaging in intimate relations with each other through the simple device of computers with web cameras connected to the Internet; no matter how morally reprehensible such an intimate connection may be to some, it is not the business of the State to pry into it, as it concerns a matter that pertains only to the privacy of the marriage bed, which is outside any legitimate interest of the State to regulate.

[38] G.R. No. 148560, Nov. 19, 2001.

85) The provision on "cybersex" is likewise overbroad. It does not set clearly the lines which divide permissible exhibition of sexual organ or engagement in sexual activity.

86) In Reno v. American Civil Liberties Union,[39] the Supreme Court of the United States declared unconstitutional two provisions of the "Communications Decency Act of 1996" (CDA) which were aiming to protect minors from "indecent" and "patently offensive" communications on the Internet. Said the Court –

87) "The vagueness of the CDA is a matter of special concern for two reasons. First, the CDA is a content based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech… Second, the CDA is a criminal statute. In addition to the opprobrium and stigma of a criminal conviction, the CDA threatens violators with penalties including up to two years in prison for each act of violation. The severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images…. As a practical matter, this increased deterrent effect, coupled with the "risk of discriminatory enforcement" of vague regulations, poses greater First Amendment concerns…."[40]

[39] 521 U.S. 844 (1997).

[40] Id. citing Gentile v. State Bar of Nev., 501 U.S. 1030, 1048-1051 (1991), Dombrowski v. Pfister, 380 U.S. 479, 494 (1965), and Denver Area Ed. Telecommunications Consortium, Inc. v. FCC, 518 U. S. (1996).

88) In the context of the cyberworld, "libel" is very difficult to determine since there are many actors in the cyberworld. To illustrate, in an alleged "libel" conducted in the cyberworld, the possible actors are:

a) the blogger;
b) the blog service provider;
c) the internet service provider (ISP);
d) the person who favorable comments in the blog; and
e) the person who posts a link to the blog site.

89) Now which of these possible actors above are criminally liable for "libel" under Section 4(c)(4) of R.A. 10175? The law as it stands does not provide a clear answer.

90) Moreover, who is criminally liable for "aiding or abetting in the commission of libel"? Is the owner of an internet café where the alleged cyber libel took place criminally liable for such crime? Is the mere posting of a blog allegedly carrying a libelous statement in cyberspace already considered "aiding or abetting in the commission of libel"?

91) There are realities in the physical world that cannot be automatically carried over to the more complex cyberspace.

92) In fact, in the physical world, the criminal liability for libel are clearly provided for in Article 360 of the Revised Penal Code (RPC), to wit:

Section Two. — General provisions

> Art. 360. *Persons responsible*. — Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

> The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.
>
> The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: *Provided, however*, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila, or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published: *Provided, further*, That the civil action shall be filed in the same court where the criminal action is filed and vice versa: *Provided, furthermore,* That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts: And, provided, finally, That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions which have been filed in court at the time of the effectivity of this law.
>
> Preliminary investigation of criminal action for written defamations as provided for in the chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such action may be instituted in accordance with the provisions of this article.
>
> No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party. (As amended by R.A. 1289, approved June 15, 1955, R.A. 4363, approved June 19, 1965).

93) Nevertheless, unlike the RPC, Section 4(c)(4) and Section 5 of R.A. 10175 are totally void of any identification as to who is/are criminally liable for "libel" in the cyberworld. And this lack of specific identification as to who are criminally liable for "libel" in the cyberworld is dangerous since the cyber world

is a freer and most accessible medium compared to traditional media; the immediacy of this new medium cannot be overstated.

94) Hence, if Article 360 of the RPC provides for specific ways of determining criminally liability for libel in the traditional media, with more reason should Section 4(c)(4) of R.A. 10175 provide for specific ways of determining libel for a porous space such as the "cyberworld"; unfortunately the law being assailed, the Cybercrime Prevention Act, fails to do so.

95) . The modern American Supreme Court has repeatedly stressed the principle that "a governmental purpose to control or prevent activities constitutionally subject [to] regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[41]

96) Because the questioned law has no clear indicators as to who might be prosecuted for cyber libel, it runs the risk of being applied in a sweeping and arbitrary manner; for this reason, it arouses the fear among citizens that anything they say or do online, especially on social networking sites, may be held to be criminal in nature; the result is the voluntary suppression of a robust public discussion on public issues.

97) Moreover, a law is void on its face for vagueness if persons of common intelligence must necessarily guess at its meaning and differ as to its application.[42]The more important aspect of the vagueness doctrine is not actual notice, but the other principal element of the doctrine—the requirement that

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41 NAACP v. Alabama, 357 US 449 (1958), 78 S.Ct. 1163, 2L.Ed.2d 1488 (1958).

42 Connally v. General Construction Co. 269 U.S. 385 (1926).

legislatures place reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement.[43]

98) The lack of such clear guidelines in the assailed law make it susceptible to official abuse.

VII. SECTION 4(C)(2) AND SECTION 6 OF R.A. 10175 VIOLATE THE EQUAL PROTECTION CLAUSE ENSHRINED IN ARTICLE III, SECTION 1, OF THE CONSTITUTION--- SINCE IT ARBITRARILY INCREASES THE PENALTY IMPOSED ON "CYBER CHILD PORNOGRAPHY' AND "CYBER LIBEL" AS COMPARED TO THE PENALTY FOR ORDINARY CHILD PORNOGRAPHY AND LIBEL—WITHOUT ANY VALID LEGAL BASIS FOR SUCH A HIGHER PENALTY.
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99) Sections 4(c)(2) and 6 of R.A. 10175 violate the equal protection clause enshrined in Article III, Section 1 of the Constitution---since it arbitrarily increases the penalty imposed on "cyber child pornography" and "cyberlibel" compared to ordinary libel---without any valid legal basis for such a higher penalty.

100) Section 6(c)(2) of RA 10175 increased by one degree the penalty for the unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system.

101) There is no rational basis for considering child pornography committed through a computer system a different class from that committed

[43] *See* Smith v. Goguen 415 U.S. 566 (1974).

through the means defined by R.A. 9775. This is a violation of the equal protection clause.

102) Section 6 of R.A. 10175 also increased the penalty for cyber libel to prision mayor from the current prision correctional for ordinary libel provided under the RPC, to wit:

> **SEC. 6.** All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided,* That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

103) This means that cyber libel is now punished with imprisonment from 6 years and one day to up to 12 years, while those convicted for ordinary libel under the RPC are subject to imprisonment only from 6 months and one day to four years and two months.

104) And because parole, a means by which a convict may be spared from actual imprisonment, may be granted only to those sentenced to serve a prison term for no more than 6 months and one day, anyone convicted for cyber libel will inevitably serve a prison term.

105) And because the Philippines leads the rest of the world in terms of Facebook and Twitter usage, this means that unlike ordinary libel complaints which are oftentimes brought against printed newspapers, given the element of publication, any user of these leading social media tools is now liable for prosecution since the fact that an allegedly libelous writing appeared on the internet is already sufficient to prove the element of publication.

106) Nevertheless, there is no such legal basis for putting cyber libel in a different class from ordinary libel. This is a clear violation of the equal protection clause.

107) In ***Adonis vs. Republic of the Philippines***, the UNHRC declared that the imprisonment imposed on Mr. Adonis for libel under the Philippine Revised Penal Code is "*incompatible with Article 19, paragraph three of the International Covenant on Civil Political Rights,*" or freedom of expression.

108) Further, in ***Adonis vs. Republic of the Philippines***, the UNHRC expressed that the Philippines is "*also under an obligation to take steps to prevent similar violations occurring in the future, including by reviewing the relevant libel legislation.*"

109) Nevertheless, despite the UNHRC View that Philippine criminal libel is incompatible with Article 19 of the ICCPR on freedom of expression, the Philippines still included "libel" in its new Cybercrime law.

*110) W*orse, this new Cybercrime law increased the penalty for cyber libel to prision mayor from the current prision correctional provided under the Revised Penal Code (RPC) for traditional libel.

111) Hence, the inclusion of libel in Section 4(c)(4) of R.A. 10175 is a clear violation of the Philippines' treaty obligation under Article 19 of the ICCPR.

VIII. SECTION 7 OF R.A. 10175 VIOLATES THE CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY ENSHRINED IN ARTICLE III, SECTION 21 OF THE CONSTITUTION AS IT PLACES AN ACCUSED IN DOUBLE JEOPARDY.
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112) Section 7 of R.A. 10175 provides that:

> **SEC. 7.** ***Liability under Other Laws.*** – A prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code, as amended, or special laws.
>
> xxx xxx xxx
> xxx xxx xxx

113) Section 7 of R.A. 10175 is a clear violation of the right against double jeopardy in Article III, Section 21 of the Constitution, to wit:

> **Section 21.** No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

114) This is because under Section 7 of R.A. 10175, an accused under the Cybercrime Prevention Act of 2012, can also be an accused under the RPC.

115) And this danger of double jeopardy is best illustrated in this wise, in this day and age when print newspapers now also come out with their online versions:.

116) In the case of Petitioners Tordesillas, Roque and Bagares, the print publications they write for also have an online presence; more often than not, their columns see publication in both the print and the online versions of the

papers they write for. Thus, they can be charged and tried for ordinary libel under the RPC and for cyber libel under the assailed law for the same column. . This is a clear violation of the right against double jeopardy.

117) The high probability that s/he may be charged and imprisoned twice for the same offense produces a "chilling effect" on any journalist.

118) Any such "chilling effect" constitutes prior restraint on free expression.

IX. SECTION 19 OF R.A. 10175 VIOLATES THE CONSTITUTIONAL PRINCIPLE OF SEPARATION OF POWERS AS IT DELEGATES TO THE DOJ IS PROPERLY A JUDICIAL FUNCTION.
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119) Section 19 of R.A. 10175 provides that:

> **SEC. 19.** ***Restricting or Blocking Access to Computer Data. —*** When a computer data is *prima facie* found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data.

120) ***First,*** the power to issue an order to restrict or block access to computer data is a judicial function. Nevertheless, Section 19 of R.A. 10175 delegates a judicial function to the DOJ—which is under the Executive Department.

121) Second, Section 19 of R.A. 10175 impliedly delegates to the DOJ a judicial function--- the determination of whether or not a computer data is *prima facie* found to be in violation of the provisions of this Act. Again, such a function

is essentially judicial in character. Hence, Section 19 of R.A. 10175 clearly violates the constitutional principle of separation of powers.

X. THE PRESUMPTION OF CONSTITUTIONALITY DOES NOT APPLY TO R.A. 10175 SINCE IT VIOLATES CONSTITUTIONALLY PROTECTED FUNDAMENTAL RIGHTS.
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122) The presumption of constitutionality does not apply to R.A. 10175 since it violates Constitutionally-protected fundamental rights, namely the right to freedom of speech, of expression, and of the press.

123) The Honorable Court has held in ***Social Weather Station, Inc. v. COMELEC***,[44] that due to the preferred status of the constitutional rights of speech, expression, and of the press, a law that imposes a prior restraint on said rights is vitiated by a weighty presumption of ***invalidity***, to wit:

> ….**Because of the preferred status of the constitutional rights of speech, expression, and the press, such a measure is vitiated by a weighty presumption of invalidity.** Indeed, "any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity. . . . The Government 'thus carries a heavy burden of showing justification for the enforcement of such restraint.'" **There is thus a reversal of the normal presumption of validity that inheres in every legislation.** *(Emphasis supplied, internal citations omitted)*[45]

124) The Honorable Court has even held in ***Ople v. Torres***[46] that when the integrity of a fundamental right is at stake, it will give the challenged law a stricter scrutiny, and that in case of doubt, the Court will lean towards a stance that will not put in danger the rights protected by the Constitution, to wit:

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[44] G.R. No. 147571, May 5, 2001.
[45] G.R. No. 147571, May 5, 2001.
[46] G.R. No. 127685, July 23, 1998.

> **….And we now hold that when the integrity of a fundamental right is at stake, this court will give the challenged law, administrative order, rule or regulation a stricter scrutiny. ..** This approach is demanded by the 1987 Constitution whose entire matrix is designed to protect human rights and to prevent authoritarianism. In case of doubt, the least we can do is to lean towards the stance that will not put in danger the rights protected by the Constitution. *(Emphasis by the Honorable Court, italics supplied)*
> [47]

125) Also, the Honorable Court has stated as far back as ***Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor,***[48] that the standard for the validity of governmental acts is ***'much more rigorous'*** if the liberty involved were freedom of the mind or the person, to wit:

> ….What may be stressed sufficiently is that if the liberty involved were freedom of the mind or the person, the standard for the validity of governmental acts is much more rigorous and exacting, but where the liberty curtailed affects at the most rights of property, the permissible scope of regulatory measure is wider.[49]

APPLICATION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY PROHIBITORY INJUNCTION AND/OR A TEMPORARY RESTRAINING ORDER (TRO)

126) Moreover, it is clear from the foregoing that there is a violation of the Petitioners' rights as taxpayers, who suffer and will continue to suffer severe injury and damage from the expenditure of public funds to enforce or implement the unconstitutional provisions of R.A. 10175.

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[47] G.R. No. 127685, July 23, 1998.
[48] G.R. No. L-24693, July 31, 1967.
[49] G.R. No. L-24693, July 31, 1967.

127) The acts of Respondents, if not immediately restrained or enjoined, will cause grave and irreparable injury to Petitioners, as Filipino citizens, taxpayers, and as---- either journalists, bloggers, or social network netizens, as the implementation or impending implementation of the unconstitutional provisions of R.A. 10175 by Respondents shall violate the fundamental law of the Republic of the Philippines.

128) For the same reasons, the commission and continuance of the implementation of R.A. 10175 during the pendency of this petition will work injustice to Petitioners, and the nation.

129) Hence, if the implementation of R.A. 10175 is not immediately enjoined, Petitioners and millions of Filipinos will suffer great or irreparable injury before the matter can be heard by the Honorable Court. Thus, Petitioners respectfully pray that the Honorable Court immediately enjoin Public Respondents from implementing R.A. 10175, pending the resolution of this petition, through the issuance of a preliminary prohibitory injunction and/or a temporary restraining order. Petitioners also pray for the exemption from the posting of a bond in view of the transcendent nature of the instant petition.

PRAYER

WHEREFORE, premises considered, Petitioners respectfully pray that:

1. Pending the resolution of this Petition, a Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction be IMMEDIATELY ISSUED, prohibiting Public Respondents from implementing R.A. 10175, and the

Respondent Secretary of the Department of Budget and Management from releasing public funds for its implementation;

2. Upon due hearing, the instant Petition be GRANTED, (a) declaring Article 355 of Act No. 3815 or the "Revised Penal Code" to be unconstitutional (b) declaring R.A. 10175, otherwise known as the "Cybercrime Prevention Act of 2012," to be unconstitutional for infringing against Constitutionally-protected fundamental rights of citizens – that is, of journalists and their audience alike, and (c) permanently prohibiting Respondents the Executive Secretary, the Department of Budget and Management, the Department of Justice, the Department of the Interior and Local Government, the National Bureau of Investigation, the Philippine National Police, and the Information and Communications Technology Office-Department of Science and Technology from implementing the same law

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

Makati City for Manila. 13 December 2012.

by the Counsel for Petitioners:

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EXPLANATION
(Pursuant to Section 11, Rule 13 of the 1997 Rules of Civil Procedure)

This *Amended Petition for Certiorari and Prohibition with Prayer for the Issuance of a Writ of Prohibitory Injunction and/or Temporary Restraining Order* is being served to the Respondents by registered mail in accordance with Section 11, Rule 13 of the Revised Rules of Court because of lack of personnel to effect personal service to each and every one of them.

GILBERT TERUEL ANDRES