EN BANC

G.R. No. 252118 – DINO S. DE LEON, *petitioner*, ***versus*** **RODRIGO ROA DUTERTE, President of the Republic of the Philippines, and THE OFFICE OF THE PRESIDENT, through SALVADOR C. MEDIALDEA, in his capacity as Executive Secretary**, *respondents.*

Promulgated:

May 8, 2020

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DISSENTING OPINION

CAGUIOA, *J.*:

In his *Extremely Urgent Petition for Mandamus,* petitioner seeks to compel respondents to: (1) publicly disclose all the medical and psychological/psychiatric examination results, health bulletins, and other health records of the President ever since he assumed the presidency; (2) submit the President to additional medical and psychological/psychiatric examinations; and (3) publicly disclose the results of such confirmatory medical and psychological/psychiatric examinations of the President.[1] Petitioner cites as basis Section 12, Article VII of the Constitution, which provides:

> SECTION 12. In case of serious illness of the President, the public shall be informed of the state of his health. The Members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

Consonant with the foregoing is the general right to information granted under Section 7, Article III of the Constitution, *to wit*:

> SECTION 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

The majority resolves to dismiss the petition outright for lack of merit, on the reasoning that petitioner fails to present a justiciable controversy, and to establish a clear legal right that was violated by respondents, and upon

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[1] Petition, pp. 41-42.

which the remedy of *mandamus* may lie.[2] The majority also holds that compliance with Section 12, Article VII is discretionary on the part of the President.[3]

I disagree with this peremptory outright dismissal of a Petition that legitimately tenders a matter of great constitutional and political importance, especially made urgent by the present health crisis the Country is facing. As Filipinos are literally facing death in the face, they deserve more from the Court than this almost cursory manner of disposition of a crucial issue. I therefore submit this Dissenting Opinion if only to highlight the uncharted and heretofore unresolved important legal and Constitutional issues that ought to have been considered and resolved by the Court through a full-blown decision.

Indeed, even without giving due course to the Petition, prudence dictated that respondents be first required to Comment on the Petition. This would have allowed the Court to better comprehend the facts and allegations relevant to the application for enforcement of Section 12, Article VII of the Constitution. The Court should not be deciding cases with undue haste especially when their nature and complexity require a more in-depth study.[4] There is simply nothing to lose in allowing respondents to argue their position before us — on the contrary, the Court has more to gain from a comprehensive discussion brought about by the contending views and arguments of both parties. In fact, respondents might just have been eager to argue their views on Section 12, Article VII. Again, I believe it important, if not crucial, that the Court directly address the issues this Petition presents so that it — the Court — can discharge its Constitutional duty after giving the parties the opportunity to be heard.

To require a Comment from the respondents is neither a needless and an embarrassing and humiliating exercise nor a course of action that may be contrary to what our tripartite system of government enjoys, as suggested during deliberations. To hold otherwise would be a gross misappreciation not only of the court processes provided under the rules, but more importantly, of the role that the Court fulfills in the Constitutional order.

In requiring a Comment, the Court is not automatically giving weight to the Petition itself. In fact, a Comment may be required even without giving due course to the petition. And even in cases which may otherwise be dismissed outright (such as where the issues involved are already well established and fine-tuned by solid existing jurisprudence), the Court still has the prerogative to require a Comment from the respondent for a more thorough discussion and a more complete disposition of the case. To be sure, a Comment merely allows the respondent to explain his or her side and

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2 Resolution, pp. 3-4.

3 Id. at 4.

4 *United BF Homeowners v. Sandoval-Gutierrez*, 374 Phil. 18 (1999).

answer the claims and arguments raised against him or her, which thereby also allows the Court to have a better appreciation of the case at hand. What more in this case where there is a novel issue that the Court has never previously ruled upon? As Associate Justice Marvic M.V.F. Leonen opined during the deliberations, requiring a Comment allows for a fuller exposition of the issues from the point of view of the respondents and prevents any suspicion that judges and justices litigate, and not decide.

It is within this milieu that it becomes truly perplexing how the majority could reach a decision to dispense with a Comment from respondents and giving short shrift to the Petition. This Court's preemption of the normal process given to a petition that unquestionably presents novel issues unnecessarily and unfortunately impacts on the public's perception of the Court's impartiality.

That the Country is currently facing a national crisis brought about by a world-wide pandemic should be the proper backdrop to understand the workings of Section 12, Article VII — and not the other way around, that is, that this crisis is used as a deterrent to the complete disposition of a case involving the constitutional duty of the President. Indeed, even in the direst situation brought about by its declaration of martial law in Mindanao, the current administration has proven that it is more than capable of obeying court processes in times of national emergency. Evidently, the competence of the Executive branch of government in discharging its duties deserves more credit than merely assuming that filing a Comment in these trying times would be too burdensome.

Too, the insinuation made by some that requiring a Comment from the Executive is antithetical to the respect, civility, cordiality, and cooperation owed to a co-equal branch of government is completely misplaced and inapt. The Court should be motivated only by judiciousness and a desire for a comprehensive understanding of a case when it requires a party to file a Comment. Adding more meaning to such an order is an overstretch and totally unfair to the Court as the final arbiter of all disputes.

Indeed, there are instances when the Court disposes of a petition even without requiring a Comment from the other party. However, it is equally true that the Court can require a Comment first, especially in cases which call for a more thorough review — and I maintain that the present Petition belongs to this category. At the risk of being repetitious, it should be emphasized that this case is of first impression which necessitates a more threshed out interpretation by the Court of a Constitutional provision. The variance in interpretations and differences in opinions expressed by the members of the majority during the deliberations already highlights the need for a more thorough study aided by a Comment from the respondents, and maybe even oral arguments.

At this point, it is important to emphasize that while the government is composed of three separate and co-equal branches of government, the powers of each branch are not wielded in the same manner. Unlike legislative power and judicial power which are vested in institutions having collegial bodies, executive power is vested in only one person: the President. Hence, unlike other branches that would continue to function despite some physical challenges to one or some of its members, the Executive branch does not possess the same luxury. One of the three pillars of government therefore, and its ability to function especially in times of crisis, relies heavily in the continuing capability of the President to discharge his functions. The state of the President's health — which naturally determines or affects his ability to discharge his functions — is thus undoubtedly of public interest and significance. This is the *raison d'etre* of Section 12, Article VII. The provision exists because the Framers recognized that the public has a right to know whether the person in whom the continuity of one branch of government depends is still able to perform his functions.

Thus, I register the following points upon which I diverge from the majority opinion:

1. The Supreme Court must discharge its duty of construing "serious illness" in Section 12, Article VII as envisioned by the Framers. This necessary exercise of the Court's jurisdiction and the demands of due process foreclose the outright dismissal of the petition. I reiterate my position that the more prudent course of action would have been to require the respondents to file a Comment, which would have undoubtedly aided the resolution of matters of substance that the Court inevitably passed upon.

   The Petition is correctly brought before the Supreme Court. *First,* the Court cannot now be heard to say that a lower court can issue a writ of *mandamus* addressed to the President. *Second*, a petition involving a constitutional provision not heretofore construed by the Supreme Court is surely an exception to the doctrine of hierarchy of courts.[5]

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[5] *N.B.:* See *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301-450 (2015), where the Court distinguished its role from other levels of the judiciary in relation to the doctrine of hierarchy of courts, thus: "This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role." To my mind, this petition presents the novel questions of law that the Supreme Court reserves its attention for.

See also *Gios-Samar, Inc. v. Department of Transportation and Communications* (G.R. No. 217158, March 12, 2019), where it recognized the exceptions to hierarchy of courts, specifically "transcendental importance" as involving cases where there were no disputed facts and the issues involved were ones of law.

The showing of a genuine issue of fact that can justify strict adherence to the doctrine is not met precisely because the respondents were not even made to Comment on the petition. The Court is also not unable to determine questions of fact and receive evidence, as it has previously done through submissions or in-camera sessions.

2. Section 12, Article VII of the Constitution is a self-executing provision and needs no implementing action from the Legislature. It cannot be superseded, as intimated by some members of the majority, by supposed contrary provisions in the Data Privacy Act or in Executive Order No. 2, s. 2016, and its allied issuances.

3. Section 12, Article VII is a positive duty on the part of the Office of the President (OP) to inform the public of the state of the President's health in case of serious illness. The OP is tasked with the initial determination of whether the state of facts warrant disclosure and is afforded the latitude for discretion only as to the manner of disclosure, while it is the Court that has the power and duty to construe what a "serious illness" is that triggers Section 12.

   Therefore, the duty to inform the public is judicially enforceable by *mandamus* in case of noncompliance, unless: (1) it did not become operative at all — in the absence of a serious illness; or (2) some sort of disclosure has already been made — the determination of the means therefor is discretionary as borne by the deliberations. The Court's decision to dismiss the Petition without Comment from the respondents prevents any rational determination whether the facts obtaining fall within either of these scenarios.

4. The different positions taken, the variance in reasoning of the desired outcome given by the members of the majority during the deliberations — all highlight the need to rule clearly and definitively on this uncharted constitutional territory.

On these premises, I register my fundamental disagreement with the majority opinion in resolving to dismiss the case without requiring the respondents to file a Comment. I submit that the disposition by the Court through a Resolution, on a matter of great constitutional and political importance, will surely be argued in the future as having doctrinal weight when it ought to not have any. For this reason alone, the Court is called upon to dispose of it by decision,[6] which in turn requires affording both parties the opportunity to be heard.

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[6] Under Rule 13, Section 6(a) of the Internal Rules of the Supreme Court, the Court shall adjudicate cases by decision "when the Court disposes of the case on its merits and its rulings have significant

On the other substantive matters ruled upon by the Court:

I.

The Court has the constitutional duty to construe the meaning of "serious illness."

The positive duty to inform the public of the state of the President's health only comes into play as soon as he is inflicted with a "serious illness." It is not suggested here that the public has a right to be informed about any and all illnesses that the President suffers from. It bears emphasis, as well, that the disclosure of a litany of what these serious illnesses are is different from the constitutional duty to disclose the President's "state of health". The wording of Section 12, Article VII itself is clear — in case of serious illness of the President, the public ***must*** be informed of the ***state of his health.***

While Section 12, Article VII does not define what constitutes a "serious illness," the proponent of the provision in the Constitutional Commission opined that it should be one that "almost but not quite incapacitates the President for that period of the serious illness."[7] Differently stated, the scenario contemplated was "one where [the President] is not really incapacitated but seriously inconvenienced in the conduct of his urgent duties as President."[8]

Nonetheless, despite these statements, the Framers did not intend to preempt or preclude the Court from defining what constitutes a "serious illness," and in the process, unnecessarily limit the operation of the provision. Instead, the Framers, in fact, expressly agreed during the deliberation that they were ***deferring to the Court*** as to what would constitute "serious illness":

> MR. TINGSON: Madam President, before Commissioner Monsod takes the rostrum, may I just add this for the record. Upon the request of Commissioner Ople, I went to our Medical Service and Dr. Fe Soriano, Chief of the Medical Service of our Constitutional Commission Secretariat, gave this opinion about serious illness. So for the record, may I read what she wrote, Madam President.
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> THE PRESIDENT: Commissioner Tingson will please proceed.
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> MR. TINGSON: Dr. Fe Soriano, Chief of our Medical Service, said that serious illness means any condition that could cause imminent death or would incapacitate the person to the extent, for example, that his mental faculties would deteriorate.

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doctrinal values; resolve novel issues; or impact on the social, political, and economic life of the nation."

7 R.C.C. No. 043, July 30, 1986.

8 R.C.C. No. 043, July 30, 1986.

> I thought that that might be good for our record, Madam President.
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> MR. DAVIDE: Madam President.
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> THE PRESIDENT: Commissioner Davide is recognized.
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> MR. DAVIDE: If the intention there is to put a definition of serious illness, I do not think the Commission or those who will interpret the Constitution should be bound by that particular opinion. **We leave the matter to the Supreme Court to interpret it later.**
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> MR. OPLE: We intended to have nothing more than the persuasive weight of the definition, Madam President.
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> Thank you.[9]

The foregoing highlights the justiciability of the issue — contrary to the position taken by the majority and some members of the Court that the present petition does not have an actual case or controversy, or that it raises a political question. The Framers of the Constitution clearly left to the Court the duty of defining when Section 12, Article VII becomes operative.

For this reason, I respectfully disagree with the submission made during the deliberations that the determination of what constitutes serious illness is "better left to a panel of medical or psychiatric experts".

The Court, in deciding petitions for the declaration of nullity of marriage filed in accordance with Article 36 of the Family Code, does not side-step or otherwise avoid the matter of psychological incapacity simply because psychologists are in a better position to set the appropriate standards. Over time, the Court has developed its own notion of psychological incapacity that would warrant the declaration of nullity of marriage. Much in the same way, the Court's task to define the concept of serious illness is a legal, not medical or psychiatric, question. To be sure, the Court ***is*** asked to define the metes and bounds of Section 12, Article VII, by interpreting the meaning of "serious illness." In performing this duty, the Court's appreciation of the totality of circumstances is only for purposes of determining whether disclosure to the public is warranted. In any case, the Court is not precluded from inviting these medical or psychiatric experts as *amici curiae* to aid the Court in its interpretation of the provision.

Thus, with utmost respect to the majority, I strongly disagree with its decision to prematurely decide if this is or is not a time to determine the application and operation of Section 12, Article VII without even requiring the respondents to first file a Comment, or otherwise listen to the full gamut of arguments and extensive discussion from the parties. The Court must not

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[9] R.C.C. No. 043, July 30, 1986.

again shirk its duty, especially now that a petition has directly invoked the right guaranteed in the provision.

In the course of the deliberations for this case, different members of the majority actually raised differing views and contrary opinions on the circumstances within which Section 12 may apply. This is precisely because the Court has never been afforded the opportunity in the past to define the contours of Section 12, Article VII. I am thus totally nonplussed as to the seeming haste and alacrity to dismiss the Petition outright.

Moreover, I disagree with the additional supposition made during the deliberations that the Court ought to refrain from further hearing the present petition because it has already become moot. For the Court to declare that the controversy has become moot solely because the President had already narrated to the public the ailments he suffers from does not only unwarrantedly preempt the full breadth and depth of the President's duty to disclose a "serious illness" as may finally be defined by the Court in interpreting Section 12, Article VII, it also clearly signals an overly deferential attitude to a sitting President.

The mootness doctrine was raised during the deliberations on the assumption that the President has already done what the Constitution requires, *i.e.* inform the public of the state of his health. This conclusion was reached because the petition itself recognizes that in several previous instances, the President himself verbally admitted to suffering from certain diseases.

This, to me, puts the cart before the horse.

Admitting to experiencing certain diseases[10] and symptoms[11] does not automatically translate into a disclosure of the President's ***"state of health".*** A state of health presupposes more than mere "medical examination results," "just statements" or enumerations of existing maladies. Rather, it must be a complete picture of the health condition of the President, which includes a full assessment and interpretation of his existing serious illness.

Here, the Court still does not know for certain and has not been able to conclusively determine — again due to the absence of more extensive proceedings, such as a Comment or even oral arguments — (1) if these diseases may be considered "serious illnesses"; (2) if these diseases affect or hamper the President's discharge of his functions; and (3) if the public has already been sufficiently made aware of the effects of the diseases on the President.

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[10] Buerger's Disease, Barrett's Esophagus, Gastroesophageal Reflux Disease, and Myasthenia Gravis, "spinal issues"

[11] Daily migraines.

In the same manner, requiring the petitioner to provide adequate evidence outside of news articles on the President's illnesses makes it virtually impossible for the public to invoke the application of the right.[12] During the deliberations, it was argued that relying on publicly-available sources such as news articles will result in either one of two things. On the one hand, it was argued that by relying on them, the petitioner runs the risk of mooting the petition, as the President is deemed to have complied with the duty. On the other hand, it was likewise argued that news articles provides scant basis for any action, as these are supposedly only speculative and "hearsay evidence, twice removed."[13] However, it would be absurd for the Court to deny the petition outright on either of these two bases in an action precisely initiated for the purpose of finding out whether there are sufficient grounds for the duty of the President to arise. As Justice Leonen opined in his Dissenting Opinion in *Lagman v. Medialdea*:[14]

> Certainly, petitioners should not be assumed to have access to confidential or secret information possessed by the respondents. Thus, their burden of proof consists of being able to marshal publicly available and credible sources of facts to convince the Court to give due course to their petition. For this purpose, petitioners are certainly not precluded from referring to news reports or any other information they can access to support their petitions. **To rule otherwise would be to ignore the inherent asymmetry of available information to the parties, with the Government possessing all of the information needed to prove sufficiency of factual basis.**
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> **Again owing to its *sui generis* nature, these petitions are in the nature of an exercise of a citizen's right to require transparency of the most powerful organ of government.** It is incidentally intended to discover or smoke out the needed information for this Court to be able to intelligently rule on the sufficiency of factual basis. The general rule that "he who alleges must prove" finds no application here in light of the government's monopoly of the pertinent information needed to prove sufficiency of factual basis.
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> As it is, a two-tiered approach is created where petitioners have no choice but to rely on news reports and other second-hand sources to support their prayer to strike down the declaration of suspension because of their lack of access to the intelligence reports funded by taxpayers. At this point, the burden of evidence shifts to the government to prove the constitutionality of the proclamation or suspension and it does this by presenting the actual evidence, not just conclusions of fact, which led the President to decide on the necessity of declaring martial law. (emphasis supplied)

Thus, the majority cannot fault the petitioner for relying on news reports to substantiate his present claim to be informed of the state of the

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12 Resolution, pp. 4-5.

13 Id.

14 812 Phil. 179 (2017).

President's health. Further contrary to the position put forth in the deliberations, there exists in the present petition a "live controversy" that does not make the petition moot. Specifically, there is here a pending question on whether the right given to the public under Section 12, Article VII of the Constitution — as well as the corresponding duty it imposes on the President — has already been fulfilled.

II.

Section 12, Article VII of the Constitution is self-executing.

During the deliberations, opinions were raised that Section 12, Article VII of the Constitution is not a self-executing provision, and neither is it a justiciable or remediable matter for which a person may seek judicial compulsion from the Court. It was posited that Section 12, Article VII requires an enabling law or executive issuance in order to be enforced by judicial action.

I disagree.

The seminal case of *Manila Prince Hotel v. GSIS*[15] (*Manila Prince*) has distinguished between a self-executing and a non-self-executing Constitutional provision, *to wit*:

> A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing. But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected, is self-executing. Thus a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.
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> As against constitutions of the past, modern constitutions have been generally drafted upon a different principle and have often become in effect extensive codes of laws intended to operate directly upon the people in a manner similar to that of statutory enactments, and the function of constitutional conventions has evolved into one more like that of a legislative body. Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that —

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[15] 335 Phil. 82 (1997).

> . . . in case of doubt, the Constitution should be considered self-executing rather than non-self-executing . . . . Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute.

The general rule, therefore, is that the provisions of the Constitution are considered self-executing and do not require future legislation for their enforcement. Even the Dissenting Opinion of then Associate Justice Reynato S. Puno, later Chief Justice, agreed on this presumption.[16] He explained that the rationale for this general rule and presumption is not difficult to discern, because to hold otherwise would pave the way for Congress to easily ignore and nullify the mandate of the fundamental law ratified by the sovereign people.[17] This much was likewise recognized by the proponent, former Senator Blas Ople, in his explanation for inserting the proposed section in the Constitution, which is now Section 12, Article VII:

> MR. OPLE: I think throughout history, there had been many recorded instances when the health of the President, or the emperor in Roman times, or the Chinese emperor in dynasties long past was concealed from the public. Generally, the wife conspires with others in order to conceal the leader's state of health. One effect of this has been on the necessary inputs to policy coming from Cabinet ministers which have been blocked from reaching the attention of the President in that state. This illness can occur during an awkward moment in the life of a nation when national survival ought to be secured in the face of a major threat short of, let us say, the proclamation of martial law or the suspension of the writ of *habeas corpus* when Congress comes in in order to exercise a monitoring function and, perhaps, a remedial function. We have not yet, in this example, attained that level of the seriousness of the situation. And yet the national security might be at stake. The national survival can hang in the balance and, therefore, the right of the people to know ought to be included in this Article on the Executive, not only the right of the people to urgent access to a President in a state of illness, but especially those who deal with the safety and survival of the nation. The Cabinet minister in charge of national security and foreign relations and the Chief of Staff of the Armed Forces ought to have access to the President as commander-in-chief. The people as well should have access to this man in that kind of dubious state so that even in that critical and awkward moment in the fortunes of the national leader, we can be sure that the people have access to him for purposes of safeguarding the national security. That is the reason the Chief of Staff of the Armed Forces is also mentioned in the proposal. I think this is based on contemporary experience as well. **And if we delegate this merely to a forthcoming legislature, there will arise situations or**

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16 As aptly observed in *Gamboa v. Teves*, 668 Phil. 1 (2011).

17 Dissenting Opinion of Justice Reynato S. Puno in *Manila Prince Hotel v. Government Service Insurance System*, supra note 15.

> **embarrassment considering that many who will compose this legislature will be very deferential towards those in power and may not even mention this at all in their agenda.**
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> **Therefore, I feel that there should be a constitutional cognizance of that danger, and the right of the people to know ought to be built into this Article on the Executive.**[18] (Emphasis supplied)

A plain reading of Section 12, Article VII does not reveal any language which works against the foregoing presumption. To be sure, there is not the slightest indication in the language of Section 12, Article VII that it is referring to the legislature the enactment of any supplementary or enabling legislation. Rather, the language of Section 12, Article VII is mandatory, and a positive command that is complete in itself.[19]

In *Manila Prince,* the Court reached a similar conclusion with regard to the second paragraph of Section 10, Article XII of the 1987 Constitution which, as constructed, bears a parallel resemblance to Section 12, Article VII.[20] The Court therein held:

> x x x From its very words the provision does not require any legislation to put it in operation. It is *per se* judicially enforceable. **When our Constitution mandates that *[i]n the grant of rights, privileges, and concessions covering national economy and patrimony, the State shall give preference to qualified Filipinos*, it means just that — qualified Filipinos shall be preferred.** And when our Constitution declares that a right exists **in certain specified circumstances** an action may be maintained to enforce such right notwithstanding the absence of any legislation on the subject; consequently, if there is no statute especially enacted to enforce such constitutional right, such right enforces itself by its own inherent potency and puissance and from which all legislations must take their bearings. Where there is a right there is a remedy. *Ubi jus ibi remedium.*[21] (Emphasis supplied)

In this regard, the Record of the 1986 Constitutional Commission reveals the **deliberate intention** of the Framers ***not* to require future legislation** for the enforcement of the right enshrined in Section 12, Article VII, which further strengthens its self-executory nature:

> MR. GUINGONA: Madam President, I was going to propose an amendment because, from the discussion, it would seem that there are many details that have to be filled in. Commissioner Ople mentioned about who should give the information, and Commissioner Suarez was talking about what kind of illness would fall within the perception of the proponent. **So, I thought, if the distinguished proponent would accept,**

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18 R.C.C. No. 043, July 30, 1986.

19 See *Manila Prince Hotel v. GSIS,* supra note 15.

20 The second paragraph of Section 10, Article XII of the 1987 Constitution reads: "In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos."

21 *Manila Prince Hotel v. GSIS,* supra note 15.

the details should be left to the Congress to determine by law, because we have no physician in this body, and perhaps the legislature would be able to provide the details. I agree fully with the principle or the concept expressed by the honorable proponent.

MR. OPLE: **I accept the amendment, and so the first sentence will now read: IN CASE OF SERIOUS ILLNESS OF THE PRESIDENT, THE PUBLIC SHALL BE INFORMED OF THE STATE OF HIS HEALTH AS MAY BE PROVIDED BY LAW.**

Madam President, I think I have just changed my mind after an expert on medical matters came around. **We are called upon to be more trusting with respect to the Office of the President that they will know what appropriate means to take in order to release this information to the public in satisfaction of the public's right to know about the presidency.**

MR. GUINGONA: Madam President, may I explain? I thought all along that the honorable proponent was thinking of a situation such as when recently there was an attempt on the part of the Executive not to inform the public. And now, we are going to entrust this obligation or duty . . .

MR. OPLE: Madam President, we will leave something for people power to do. Maybe Commissioner Aquino can lead a march, if they are not satisfied with the information coming from the Office of the President.

THE PRESIDENT: So, the proponent does not accept the amendment.

MR. OPLE: Thank you.

THE PRESIDENT: Is Commissioner Guingona also not insisting on his proposed amendment?

MR. GUINGONA: No, Madam President.[22] (Emphasis and underscoring supplied)

The rejection of the proposed amendment requiring enabling legislation is a clear manifestation of the Framers' intention to place upon the Executive the duty of observing Section 12, Article VII, should the circumstances for its operation arise. It is a clear mandate to protect the right of the public to be informed of the President's state of health, in case of a serious illness.[23]

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22 R.C.C. No. 043, July 30, 1986.

23 In the deliberations of the 1986 Constitutional Commission, the following discussion also took place:

THE PRESIDENT: **At any rate, the thrust of the amendment is that at least the public should be informed.**

MR. OPLE: **Yes, Madam President. It is the public's right to know**; besides, the safeguarding of our national survival and security can be irretrievably impaired if the access of those in charge of national security and foreign relations is cut off through

The right of the public to be informed under Section 12, Article VII must be read together with the right to information under Section 7, Article III of the Constitution.

The right of the public to information on the state of health of the President under Section 12, Article VII is a subset of the fundamental right to information on matters of public concern granted in Section 7, Article III of the Constitution. Reading these two provisions together is called for and unavoidable. The two provisions share the same subject matter, albeit Section 12, Article VII is more *specific* with the information on the state of health of the President. They also share the same purpose of granting the public the right to be informed. Sharing the same subject matter and purpose, Section 12, Article VII and Section 7, Article III are clearly *in pari materia,* and as such, they are, as they ought to be, construed together.

In pari materia is the principle that "different clauses, sections, and provisions of a constitution which relate to the same subject matter will be construed together and considered in the light of each other."[24] To illustrate, in *David v. Arroyo*[25] the Court declared Section 23, Article VI and Section 17, Article XII of the Constitution to be *in pari materia,* on the ground that they both relate to national emergencies. These sections read:

> ARTICLE VI, SECTION 23. (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.
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> (2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.
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> ARTICLE XII, SECTION 17. In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

Though found in different parts of the Constitution, the Court held that Section 17, Article XII must be understood as an *aspect* of the emergency powers clause espoused in Section 23, Article VI. The taking over of private business affected with public interest is just another facet of

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confabulations in the household, so that the President is kept in a state of ignorance about a period of national danger. (Emphasis supplied)

24 *David v. Arroyo*, 522 Phil. 705 (2006).

25 Id.

the emergency powers generally reposed upon Congress. Consequently, both sections must be read together to determine the limitation of the exercise of emergency powers.[26]

Likewise, that Section 12, Article VII should be interpreted together with Section 7, Article III finds support in the case of *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*.[27] The Court therein declared that the policy of public disclosure of transactions involving public interest under Section 28, Article II of the Constitution[28] was intended as a "splendid symmetry" to the right to information under the Bill of Rights.[29] The Court thus ruled that the policy of full public disclosure enunciated in Section 28, Article II *complements* the right to access to information of public concern in Section 7, Article III — the right to information guarantees the right of the people to demand information, while Section 28 recognizes the duty of officialdom to give information even if nobody demands.[30]

Further, as regards the self-executing nature of Section 28, Article II, the Court examined the same also in light of Section 7, Article III:

> Indubitably, **the effectivity of the policy of public disclosure need not await the passing of a statute**. As Congress cannot revoke this principle, it is merely directed to provide for "reasonable safeguards". The complete and effective exercise of the right to information necessitates that its complementary provision on public disclosure derive the same self-executory nature. Since both provisions go hand-in-hand, it is absurd to say that the broader right to information on matters of public concern is already enforceable while the correlative duty of the State to disclose its transactions involving public interest is not enforceable until there is an enabling law. Respondents cannot thus point to the absence of an implementing legislation as an excuse in not effecting such policy.
>
> An essential element of these freedoms is to keep open a continuing dialogue or process of communication between the government and the people. It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Envisioned to be corollary to the twin rights to information and disclosure is the design for feedback mechanisms.
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> x x x x
>
> The imperative of a public consultation, as a species of the right to information, is evident in the "marching orders" to respondents. The

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26 Id.

27 589 Phil. 387 (2008).

28 "SECTION 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."

29 *Province of North Cotabato v. GRRP,* supra note 27.

30 Id.

> mechanics for the duty to disclose information and to conduct public consultation regarding the peace agenda and process is manifestly provided by E.O. No. 3. x x x[31]

Parenthetically, the Court definitively ruled in *Legaspi v. CSC*[32] that the fundamental right to information guaranteed under Section 7, Article III is a self-executing provision, notwithstanding the caveat in the last phrase "*subject to such limitations as may be provided by law*." The Court held:

> [It] suppl[ies] the rules by means of which the right to information may be enjoyed (Cooley, A Treatise on the Constitutional Limitations 167 [1927]) by guaranteeing the right and mandating the duty to afford access to sources of information. **Hence, the fundamental right therein recognized may be asserted by the people upon the ratification of the constitution without need for any ancillary act of the Legislature.** (*Id.* at, p. 165) What may be provided for by the Legislature are reasonable conditions and limitations upon the access to be afforded which must, of necessity, be consistent with the declared State policy of full public disclosure of all transactions involving public interest (Constitution, Art. 11, Sec. 28). However, it cannot be overemphasized that **whatever limitation may be prescribed by the Legislature, the right and the duty under Art. III Sec. 7 have become operative and enforceable by virtue of the adoption of the New Charter. Therefore, the right may be properly invoked in a mandamus proceeding such as this one.**[33] (Emphasis supplied)

This ruling was reiterated in the case of *Gonzales v. Narvasa*,[34] thus:

> The right to information is enshrined in Section 7 of the Bill of Rights which provides that —
>
> > The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.
>
> **Under both the 1973 and 1987 Constitution, this is a self-executory provision which can be invoked by any citizen before the courts.** This was our ruling in *Legaspi v. Civil Service Commission*, wherein the Court classified the right to information as a public right and "when a *mandamus* proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general 'public' which possesses the right."

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31 Id.
32 234 Phil. 521 (1987).
33 Id.
34 392 Phil. 518 (2000).

x x x x

> Elaborating on the significance of the right to information, the Court said in *Baldoza v. Dimaano* that "[t]he incorporation of this right in the Constitution is a recognition of the fundamental role of free exchange of information in a democracy. There can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision making if they are denied access to information of general interest. Information is needed to enable the members of society to cope with the exigencies of the times." The information to which the public is entitled to are those concerning "matters of public concern," a term which "embrace[s] a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine in a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public." (citations omitted)

There were observations made during the deliberations that Section 12, Article VII was, by deliberate design, not placed under Article III on the Bill of Rights but under Article VII on the Executive Department. This placement allegedly signals that the provision is not a fundamental constitutional right but rather, a *sui generis* responsibility falling within the sole discretion of the Executive, similar to the other essential prerogatives inherent to the Executive Department.

With utmost respect, I differ.

As already discussed, Section 12, Article VII in itself recognizes the right of the people to be informed of the state of the President's health concomitant to the clear and positive duty of the President to inform the public. This is further strengthened by the right to information under Section 7, Article III. That the former provision does not appear in the Bill of Rights is inconsequential. As held in *Oposa v. Factoran*:[35]

> **While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter.** Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — 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

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35 296 Phil. 694 (1993).

> 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. (Emphasis supplied)

Accordingly, Section 12, Article VII and Section 7, Article III, being undoubtedly complementary provisions, should be read together and interpreted to be self-executing provisions of the Constitution, which can be invoked as a matter of right.

The right to informational privacy guaranteed under the Data Privacy Act of 2012 cannot supersede the Constitutional right afforded to the public and the Constitutional duty imposed under Section 12.

It was further raised during the deliberations that the President has a right to informational privacy, which protects against the disclosure of his state of health, and that therefore, Section 7, Article III does not apply to this matter. It was pointed out, specifically, that under the Data Privacy Act of 2012, information about an individual's health, including previous or current records, are considered sensitive personal information which are protected and cannot be processed except in certain cases.

I believe otherwise.

Indeed, as a rule, the processing of sensitive personal information and privileged information is prohibited under Section 13 of Republic Act (RA) No. 10173, otherwise known as the Data Privacy Act of 2012. As defined under the Act, processing refers to any operation or any set of operations performed upon personal data including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data. On the other hand, sensitive personal information includes personal information about an individual's health.[36]

Section 13 of RA 10173, however, provides for exceptions. I submit that the exception under Section 13 (b) is applicable in this case:

> SEC. 13. *Sensitive Personal Information and Privileged Information.* – The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:

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36 Section 3(l) of RA 10173.

x x x x

> (b) The processing of the same is provided for by existing laws and regulations: *Provided,* That such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information: *Provided, further,* That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information;

The information on the state of health of the President is inarguably a matter of public concern that falls within the general and specific subjects contemplated in Section 7, Article III and Section 12, Article VII of the Constitution, respectively. By Constitutional grant itself, the information is taken out of the exception on processing and disclosure of sensitive personal information. In other words, the Constitutional mandate under Section 12, Article VII is the strongest justification to process and disclose, notwithstanding the sensitivity of the information involved. As will be further discussed shortly, the limited application of Section 12, Article VII and the recognition on the lack of reasonable expectation of privacy on the part of the President make Section 13 (b) of RA 10173 operative.

In the same manner, Executive Order (EO) No. 2,[37] which specifically operationalizes in the Executive Branch the people's Constitutional right to information and the State's duty to full public disclosure and transparency in the public service, provides certain exceptions in which access to information is not allowed. These exceptions were inventoried, pursuant to the directive under Section 4 of EO No. 2, through a Memorandum dated November 24, 2016 of Executive Secretary Salvador Medialdea.[38] Among the exceptions is information of a personal nature, to which medical or health records are included. The basis for this exception is that the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. But similar to RA 10173, the Memorandum also prominently carves out an exception to the exception:

> 4. Information deemed confidential for the protection of the privacy of persons and certain individuals as minors, victims of crimes, or the accused. These include:
>
> > a. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, personal information or records, including

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37 Operationalizing in the Executive Branch the People's Constitutional Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor (July 23, 2016).

38 Office of the President, Memorandum from the Executive Secretary, Re: Inventory of Exceptions to Executive Order No. 2 (s. 2016).

> sensitive personal information, birth records, school records, or medical or health records.
>
> Sensitive personal information as defined under the *Data Privacy Act of 2012* refers to personal information:
>
> x x x x
>
> (2) about an individual's health, x x x
>
> (3) issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, x x x
>
> x x x x
>
> **However, personal information may be disclosed to the extent that the requested information is shown to be a matter of public concern or interest, shall not meddle with or disturb the private life or family relations of the individual and is not prohibited by any law or regulation. Any disclosure of personal information shall be in accordance with the principles of transparency, legitimate purpose and proportionality.**
>
> x x x x (Emphasis supplied; citations omitted)

The information on the state of health of the President during a serious illness falls squarely within the foregoing proviso. Again, there can be no serious denying that said information is a matter of public concern or interest. The Constitution characterizes it as such under certain conditions and thus obligates its ensuing disclosure.

True, the proviso likewise cautions that the disclosure shall not meddle with or disturb the private life or family relations of the individual. This proceeds from the right of an individual to be free from unwarranted intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities.[39] The right to be free from humiliation, however, is far outweighed by the public interest at stake and the paramount significance of knowing the present health condition of the Chief Executive of the land. As such, while the right to privacy guarantees an individual freedom from unwarranted publicity or interference by the public, this is understood to pertain only to matters in which the public is not necessarily

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[39] See *Spouses Hing v. Choachuy, Sr., et al.*, 712 Phil. 337 (2013).

concerned.[40] It cannot be gainsaid that the state of health of the President who suffers from a serious illness is a matter which the public is necessarily and rightly concerned about. The Constitutional duty to disclose, therefore, heeds the legitimate need of the public to be assured of having a President who is able to discharge the functions of the office despite his or her serious illness.

More importantly, a sitting President cannot validly claim a reasonable expectation of privacy to his medical and health records. The clear language of Section 12, Article VII of the Constitution removes this expectation and serves as notice of the nature, purpose, and extent of the right to information of the public to a President's state of health and his correlative duty to disclose. Whatever loss or constraints imposed on the President is justified by the underlying considerations of legitimate public interest. The Framers had weighed these competing interests of the President and the public and had found the latter's interest to be more deserving of protection. At the same time, by circumscribing both the right to information and the duty to disclose to only cases of a "serious illness," the Constitution does not intend to go beyond what is fair and necessary. Hence, any disclosure of personal information under Section 12, Article VII remains faithful to the proviso in the Memorandum of the Executive Secretary that it shall be in accordance with the principles of transparency, legitimate purpose and proportionality.[41]

This calls to mind the case of *Nixon v. Administrator of General Services, et al.*[42] (*Nixon*), which, although not on all fours with the present case, is persuasive and demonstrative of the import of balancing competing but equally significant rights and interests.

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40 Id.

41 Section 18 of the IRR of the Data Privacy Act provides:

> Section 18. *Principles of Transparency, Legitimate Purpose and Proportionality.* The processing of personal data shall be allowed subject to adherence to the principles of transparency, legitimate purpose, and proportionality.
>
> a. Transparency. The data subject must be aware of the nature, purpose, and extent of the processing of his or her personal data, including the risks and safeguards involved, the identity of personal information controller, his or her rights as a data subject, and how these can be exercised. Any information and communication relating to the processing of personal data should be easy to access and understand, using clear and plain language.
>
> b. Legitimate purpose. The processing of information shall be compatible with a declared and specified purpose which must not be contrary to law, morals, or public policy.
>
> c. Proportionality. The processing of information shall be adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose. Personal data shall be processed only if the purpose of the processing could not reasonably be fulfilled by other means."

42 433 U.S. 425 (1977).

After the tenure of former President Nixon, the Presidential Recordings and Materials Preservation Act was enacted for the purpose of preserving, maintaining, and archiving Presidential records. Apart from the presidential privilege of confidentiality, President Nixon invoked his right to privacy over personal documents and communications co-mingled with those which were official. The US Supreme Court acknowledged that, "at least when Government intervention is at stake, public officials, including the President, are not wholly without constitutionally protected privacy rights in matters of personal life unrelated to any acts done by them in their public capacity." It was quick to add, however, that President Nixon's claim of invasion of his privacy "cannot be considered in the abstract; rather, the claim must be considered in light of the specific provisions of the Act, **and any intrusion must be weighed against the public interest in subjecting the Presidential materials of appellant's administration to archival screening**."[43] The US Supreme Court thus concluded:

> In sum, appellant has a legitimate expectation of privacy in his personal communications. But the constitutionality of the Act must be viewed in the context of the limited intrusion of the screening process, of appellant's status as a public figure, of his lack of any expectation of privacy in the overwhelming majority of the materials, of the important public interest in preservation of the materials, and of the virtual impossibility of segregating the small quantity of private materials without comprehensive screening. When this is combined with the Act's sensitivity to appellant's legitimate privacy interests, the unblemished record of the archivists for discretion, and the likelihood that the regulations to be promulgated by the Administrator will further moot appellant's fears that his materials will be reviewed by "a host of persons," we are compelled to agree with the District Court that appellant's privacy claim is without merit.[44] (Citations omitted)

In this jurisdiction, the Court in *Morfe v. Mutuc*[45] (*Morfe*) was confronted with a similar issue on the privacy of public officials. As in *Nixon*, the constitutionality of RA 3019, which includes a provision that all government officials must comply with the routine filing of a statement of assets and liabilities, was challenged. The disclosure of the required information was argued as an unlawful intrusion on a person's right to privacy. The Court rejected this view, holding that there is a "rational relationship" between the declared policy of the law to deter corrupt acts on the part of public officials, and the information to be disclosed — consequently placing the amounts and sources of a public officer's income outside the zone of his or her privacy. The declared policy of the State to ensure the honesty and integrity of officials outweighs the privacy interests over the required information. *Morfe,* therefore, demonstrates the Court's implicit recognition of the legitimacy of the public's interest over certain

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43 Emphasis supplied.

44 *Nixon v. Administrator of General Services, et al.,* supra note 42.

45 130 Phil. 415 (1968).

information concerning government officials, as long as it relates to the performance of their duty.

Indubitably, in this case, the substantial and overriding public interest and concern involved and the limited execution of the Constitutional duty to disclose justify the intrusion into the President's informational privacy over the state of his or her health.

III.

The duty of the President under Section 12, Article VII to disclose the state of his health in case of a serious illness is a ministerial duty.

As a constitutionally guaranteed right arising from a positive duty, Section 12, Article VII is judicially enforceable. Hence, contrary to the position expressed by the majority, I submit that this right is enforceable through an action for *mandamus*, in order to compel the President to perform the positive duty imposed upon him by this provision.

The Framers have clearly placed upon the OP the **duty** of informing the public of his state of health in case of serious illness, as seen from the following exchanges:

> MR. NOLLEDO: Will the proposed provisions apply if the President is absent because he claims to be writing a book?
>
> MR. OPLE; Yes, but **we put the burden on him to tell a lie to the people in derogation of his duties** in the Constitution.
>
> x x x x
>
> MR. RODRIGO: For the record, would failure to comply with this constitutional mandate be considered culpable violation of the Constitution which is one of the grounds for impeachment?
>
> MR. OPLE: **In the sense that a constitutional standard was violated, I think that is a perfectly censurable act.** But I am not inclined to say at this point that it attains to the level of a culpable violation. (Emphasis supplied)

Evidently, the burden is placed on the President and a violation of this provision, while not considered as culpable to be a ground for impeachment, is nevertheless a "perfectly censurable act."

In this regard, some members of the majority made observations during the deliberations that the remedy against a Chief Executive who decides not to inform the public is not through the Court, but one which may

be sought through "people power." This alludes to the following exchanges between the Framers:

> MR. OPLE: I accept the amendment, and so the first sentence will now read: IN CASE OF SERIOUS ILLNESS OF THE PRESIDENT, THE PUBLIC SHALL BE INFORMED OF THE STATE OF HIS HEALTH AS MAY BE PROVIDED BY LAW.
>
> Madam President, I think I have just changed my mind after an expert on medical matters came around. **We are called upon to be more trusting with respect to the Office of the President that they will know what appropriate means to take in order to release this information to the public in satisfaction of the public's right to know about the presidency.**
>
> MR. GUINGONA: Madam President, may I explain? I thought all along that the honorable proponent was thinking of a situation such as when recently there was an attempt on the part of the Executive not to inform the public. And now, we are going to entrust this obligation or duty . . .
>
> MR. OPLE: Madam President, **we will leave something for people power to do. Maybe Commissioner Aquino can lead a march, if they are not satisfied with the information coming from the Office of the President.**
>
> THE PRESIDENT: So, the proponent does not accept the amendment.
>
> MR. OPLE: Thank you. (Emphasis supplied)

While Commissioner Ople did mention people power, signaling political — and not judicial — recourse, the statement was made in the context of the people's dissatisfaction with the information coming from the President — meaning, the President had already discharged the burden which explanation is deemed unsatisfactory. As to the President's failure to discharge the burden, the Framers had already viewed this as a "perfectly censurable act," for which judicial recourse may be had.

Moreover, considering that this also involves the right to information, it is already settled in case law[46] that such right may be properly invoked in a *mandamus* proceeding such as the present petition. At any rate, the omission from a Constitution of any express provision for a remedy for enforcing a right or liability is not necessarily an indication that the constitutional provision is not intended to be self-executing or that it is not, by itself, fully enforceable.[47]

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46 *Legaspi v. CSC*, supra note 32.

47 See *Manila Prince Hotel v. GSIS*, supra note 15.

The office of the writ of *mandamus* is well-settled. It is a command issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law.[48] It lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary.[49] A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when its discharge requires neither the exercise of official discretion nor judgment.[50]

The Court in *MMDA v. Concerned Residents of Manila Bay*[51] (*MMDA*) held that the obligation to perform duties as defined by law, on the one hand, and how duties shall be carried out, on the other, are two different concepts. It expounded then that "while the implementation of the MMDA's mandated tasks may entail a decision-making process, the enforcement of the law or the very act of doing what the law exacts to be done is ministerial in nature and may be compelled by *mandamus*."

As in the case with *MMDA,* the duty of the President to inform the public about the state of his health in case of a serious illness is a duty imposed by the Constitution and cannot be characterized as discretionary. A discretionary duty is one that "allows a person to exercise judgment and choose to perform or not to perform."[52] Here, in case of a serious illness, the Constitution does not give the President any discretion to forego the public disclosure of his state of health. There is simply no room for him to exercise any judgment on this score.

Indeed, the Framers intended to "leave the burden to the Office of the President to choose the appropriate means of releasing information to the public."[53] However, the intention meant just that – to choose ***the appropriate means of releasing information*** to the public. Simply put, the discretion left to the President is limited to this aspect, which is the determination of the ***manner of public disclosure.*** It does not go into the discretion as to whether the President may or may not disclose when there is a serious illness. **In other words, the President is given the right to decide *how* the duty is performed, not *if* the duty is to be performed at all.**

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48 *Martinez v. Martin*, 749 Phil. 353 (2014).

49 *Segovia v. CCC*, 806 Phil. 1019 (2017), citing *Special People, Inc. Foundation v. Canda,* 701 Phil. 365, 387 (2013).

50 *Special People, Inc. Foundation v. Canda*, id.

51 595 Phil. 305 (2008).

52 Id., citing Black's Law Dictionary (8th ed., 2004).

53 R.C.C. No. 043, July 30, 1986.

At this juncture, I likewise take exception to the suggestion made during the deliberations that the Constitutional Commission delegated to the OP the exclusive discretion to determine the substance of the access and information itself (*e.g.*, would it include medical examination results, or medical bulletins, or just statements, agenda of the access, length and place of the access, persons allowed access). As previously pointed out, the Framers only delegated to the President the discretion to choose the appropriate means of releasing the information. The substance thereof is not subject to such discretion as it must adhere to what the Constitution mandates, which is the President's "state of health." To reiterate, a state of health presupposes more than mere "medical examination results," "just statements" or enumerations of existing maladies. On the contrary, the state of health must be a complete picture of the health condition of the President, which includes a full assessment and interpretation of his or her existing serious illness. To suggest otherwise defeats the purpose of the provision.

To further emphasize the above-mentioned intention to limit the discretion afforded the President, it is well to point out that the discussion by the Framers on the "appropriate means" sprung from the rejection of the original proposal that the information be made available to the public "through the minister of health or other appropriate authority." Since the President's health is a personal matter to some degree, the Framers agreed to dispense with requiring the Minister of Health or other appropriate authority to comply with the required disclosure, eventually leaving it to the President to determine the *proper mechanism* of informing the public.[54]

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[54] "MR. ABUBAKAR: May I ask the proponent a few questions?
Concerning the President or the Executive of any state, his health primarily does not only concern the nation but also his family and probably his own personal advisers and physician. Then, why should we subject the state of health of the President to another institution or entity which has no direct concern over his health and may not know the background of his illness?

MR. OPLE: Is the Gentleman referring to the Minister of Health or other appropriate authority?

MR. ABUBAKAR: Yes. He could be the Minister of Health in as far as the President views the health situation of the country and his people. But this is a personal matter concerning the health of the President. Like us, the Members of the Commission, we do have our personal physicians, and this is a matter between us and our own physicians. So, the state of health or analysis as to the actual condition of the President should be left to the President and his doctor.

MR. OPLE: Is Commissioner Abubakar suggesting that we eliminate the phrase "THROUGH THE MINISTER OF HEALTH OR OTHER APPROPRIATE AUTHORITY"?

MR. ABUBAKAR: Yes.

MR. OPLE: We accept the amendment, madam President.

x x x x

THE PRESIDENT: With the elimination of the Minister of Health, who will then inform the public? I just want to clarify that.

MR. OPLE: Madam President, I think we will leave the burden to the Office of the President to choose the appropriate means of releasing information to the public." [R.C.C. No. 043, (July 30, 1986).]

The duty to disclose the state of the President's health must likewise be read in conjunction with the spirit of Section 12, Article VII, in that it was crafted to prevent the concealment of the President's serious illness, **most especially in times of national crises**. The thrust of this provision, according to the Framers, is to textualize in the Constitution the right of the public to be informed about the state of health of the President in case of a serious illness. Under pain of repetition, the illuminating explanatory note of former Senator Ople is worth re-quoting:

> MR. OPLE: **I think throughout history, there had been many recorded instances when the health of the President, or the emperor in Roman times, or the Chinese emperor in dynasties long past was concealed from the public.** Generally, the wife conspires with others in order to conceal the leader's state of health. **One effect of this has been on the necessary inputs to policy coming from Cabinet ministers which have been blocked from reaching the attention of the President in that state. This illness can occur during an awkward moment in the life of a nation when national survival ought to be secured in the face of a major threat** short of, let us say, the proclamation of martial law or the suspension of the writ of *habeas corpus* when Congress comes in in order to exercise a monitoring function and, perhaps, a remedial function. We have not yet, in this example, attained that level of the seriousness of the situation. And yet **the national security might be at stake. The national survival can hang in the balance and, therefore, the right of the people to know ought to be included in this Article on the Executive, not only the right of the people to urgent access to a President in a state of illness, but especially those who deal with the safety and survival of the nation.** The Cabinet minister in charge of national security and foreign relations and the Chief of Staff of the Armed Forces ought to have access to the President as commander-in-chief. The people as well should have access to this man in that kind of dubious state so that even in that critical and awkward moment in the fortunes of the national leader, we can be sure that the people have access to him for purposes of safeguarding the national security. That is the reason the Chief of Staff of the Armed Forces is also mentioned in the proposal. I think this is based on contemporary experience as well. And if we delegate this merely to a forthcoming legislature, there will arise situations or embarrassment considering that many who will compose this legislature will be very deferential towards those in power and may not even mention this at all in their agenda.
>
> **Therefore, I feel that there should be a constitutional cognizance of that danger, and the right of the people to know ought to be built into this Article on the Executive.** (Emphasis supplied)

On a related note, the submission argued during the deliberations that the application of Section 12, Article VII is limited to only two instances: national security and foreign relations – and had the framers intended to include "public health emergency," they would have necessarily added the Secretary of Health to the list of Cabinet members who shall not be denied access to the President during such illness, must fail. The same fate holds true to the other suggestion that Section 12, Article VII may only operate when the President is inaccessible or incommunicado to the public, and there

are reasonable and well-founded grounds to believe that national security and national survival are in real jeopardy.

A plain reading of Section 12, Article VII shows that no other condition is imposed by the Constitution on the public's right to be informed of the President's state of health as long as the President's illness is classified as serious. Whatever may be the current state of the country at such time is of no moment. That the Constitution mentions the Cabinet members in charge of national security and foreign relations and the Chief of Staff of the Armed Forces as persons who should not be denied access to the President during such illness is not a limitation of the situation to only threats to national security or foreign relations; rather, it should be interpreted as underscoring the significance of making sure that the President is still capable of governing.

There is also no discernible intention from the deliberations to confine the operation of Section 12, Article VII to these circumstances. The Framers' references to ensuring the nation's survival, when there is a major threat occurring at the same time that the President is suffering from a serious illness, is simply to guarantee the continuous access of the named officials to the President. By doing so, there is an assurance that the President receives uninterrupted and unfiltered information, which in turn, aids the President in making policy decisions while being seriously ill.[55]

In the same vein, I respectfully disagree with the submission that for Section 12, Article VII to operate, the President, while suffering from a serious illness, must be inaccessible or incommunicado to the public, the Members of the Cabinet in charge of national security and foreign relations, and the Chief of Staff of the Armed Forces of the Philippines. Neither the text of the Constitution nor the Framers' deliberations support this.

Premising the operation of Section 12, Article VII on this circumstance presumes that the President's absence (or presence) is an invariable standard. However, it is not unheard of for a President to remain in the public eye while suffering from a serious illness. The President may also easily evade the disclosure of the state of his or her health by simply appearing in public or meeting with the cabinet, despite his or her affliction.

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[55] "MR. OPLE: I think throughout history, there had been many recorded instances when the health of the President, or the emperor in Roman times, or the Chinese emperor in dynasties long past was concealed from the public. Generally, the wife conspires with others in order to conceal the leader's state of health. One effect of this has been on the necessary inputs to policy coming from Cabinet ministers which have been blocked from reaching the attention of the President in that state. x x x

x x x x

MR. OPLE: Yes, Madam President. It is the public's right to know; besides, the safeguarding of our national survival and security can be irretrievably impaired if the access of those in charge of national security and foreign relations is cut off through confabulations in the household, so that the President is kept in a state of ignorance about a period of national danger." [R.C.C. No. 043, (July 30, 1986).]

This leaves the President with unbridled discretion to comply with Section 12, Article VII — the situation that the Framers precisely sought to avoid by vesting the duty to disclose with a concomitant right of the public to the information. Clearly, the proposed requirement is an excessively narrow application of the provision that fails to consider other serious ailments, which are imperceptible, or which may be concealed from public view.[56] The prolonged absence of the President is therefore, at best, only circumstantial.

Evidently, it is not indispensable for the President to become inaccessible or incommunicado for the duty to disclose to arise. On the contrary, this provision contemplates a situation where, despite being afflicted with a serious illness, the President is nonetheless able to make important decisions through the Cabinet members in charge of national security and foreign relations, and the Chief of Staff of the Armed Forces of the Philippines.[57] This is further highlighted in the second sentence of Section 12, Article VII, which assures the access of these officials to the President that would otherwise be unnecessary if the President is fully incapacitated to perform the functions and duties of his office. For the same reasons, I also completely disagree with the suggestion that disclosure is necessitated only when the serious illness prevents the President from doing his job in a grave manner.

Reading Section 12 alongside Sections 8 and 11 of Article VII strongly bolsters the foregoing observation. Sections 8 and 11 of Article VII address the contingencies that may arise, depending on the severity of the illness and incapacity of the President to discharge the functions of the office.

If the President's serious illness escalates and renders the President temporarily unable to discharge the functions of the office, Section 11,[58]

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[56] *N.B.* When former President Ferdinand E. Marcos was hounded with persistent rumors regarding his failing health, he publicly appeared on television to remove doubts on his capacity to discharge the functions of his office. It was later found out that Marcos was suffering from lupus despite these public appearances. At that time, it is significant to note that there was no provision in the 1973 Constitution requiring the disclosure of the President's state of health in case of serious illness.

[57] *See* Joaquin G. Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 862 (2009 ed).

[58] "SECTION 11. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of his office.

Article VII shall operate, in which case, the Vice-President is to assume the functions of the office as Acting President. The President may still re-assume the powers and duties of the office upon transmittal to the Senate President and to the Speaker of the House of Representatives of a written declaration that no such inability exists. But in the unfortunate event of the President's death or permanent disability, Section 8,[59] Article VII designates the Vice-President as the successor, to assume the office for the unexpired term. Thus, when read together, Sections 8 and 11 of Article VII reveal that the thrust on the public's right to information about the state of health of the President, afforded by Section 12, Article VII, is anchored further, if not more significantly, on the imperativeness of determining the ability of the President to govern in the face of a serious illness.

The President's capacity to govern is a matter of public interest, whether during ordinary times or in "**an awkward moment in the life of a nation when national survival ought to be secured in the face of a major threat.**"[60] The latter is precisely what confronts the country now — its continued survival given the gravity of a pandemic which affects not only the entire country but the whole world. It is a fair and reasonable requirement for the public to be informed of the state of health of the President when threats and emergencies affecting the country are present — including emergencies involving public health.

The wording of Section 12, Article VII itself, as well as the intention of the Framers, imposes a positive duty and recognizes the right of the public to be informed. To interpret the deliberations of the 1986 Constitutional Commission as a grant to the President of the absolute choice between divulging and concealing a serious illness and, by extension, the state of the President's well-being, defeats the purpose of the provision and

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Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.

If the Congress, within ten days after receipt of the last written declaration, or, if not in session, within twelve days after it is required to assemble, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice-President shall act as the President; otherwise, the President shall continue exercising the powers and duties of his office."

[59] "SECTION 8. In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified.

The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President."

[60] R.C.C. No. 043, July 30, 1986.

renders it wholly ineffective if not completely inutile. This is a dangerous path which should not be taken.

IN VIEW THEREOF, I **DISSENT** from the majority Resolution peremptorily dismissing the petition without observance of due process.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice