EN BANC

G.R. No. 252118 – DINO S. DE LEON, *Petitioner, v.* **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

LEONEN, *J.*:

With the greatest respect for my most esteemed colleagues, I regret that I must emphatically disagree with the majority that this Petition of extreme transcendental importance setting foundational doctrines can be decided without so much as a comment from respondents or the Office of the Solicitor General.

Most constitutional controversies involve a choice of protecting the rights of the sovereign or upholding the privileges and immunities of incumbents discharging temporary political positions. Protecting the temporary incumbent in one of the most important public positions during an international pandemic not only undermines overall public confidence in his leadership, but also creates an atrocious precedent, which invites abuse in the future. Far worse will be the impression that this Court avoids a fully litigated procedure to give proper meaning to a constitutional provision through a *motu proprio* dismissal.. ***It undermines our independence and makes this Court vulnerable to a charge that we have ceased to be a sentinel of the fundamental rights of the sovereign people and enrobed ourselves with the garments of servility.***

The public is entitled to know whether there are moments that the President is even temporarily and involuntarily unable to discharge his duties, which may cause the entire Executive to be run under the command of unelected officials. ***In my view, the publication of a regular and official medical bulletin pertaining to the health of the Chief Executive, who is also the Commander-in-Chief and the Head of State, especially during a period of national emergency, is of such negligible burden for a President who ran under a platform of persistent and courageous transparency.***

During a public emergency, ordinary people who unwittingly become victims of COVID-19 disclose so much information about themselves which, during normal times, are private. Yet, through our ruling in this case, we demand less of a sacrifice from a leader who is supposed to represent those who ask for his official medical bulletin. ***Any interpretation of the Constitution should not result in such an inequitable and absurd result and, without compelling reasons, protect one in power and in a position of public trust. It is axiomatic that the health of the President in a democratic and republican state is of genuine and serious public concern.***

With great respect, dismissing this Petition outright and with such dispatch underestimates the incumbent of the Office of the President. Regardless of any controversy pending with this Court, he has, in the past, shown resilience. Through various statements, they have committed to follow the final and wise collective interpretation of the Constitution and the law by the Supreme Court. We cannot allow ourselves, through an abbreviated proceeding, to provide protection for the President that he does not need. We have to trust that our interpretation of the power of the sovereign people, as clearly articulated in the Constitution, will be respected.

That is an essential element of the rule of law.

Petitioner has made a *prima facie* case of the need for this Court to consider the issues he has raised. We cannot, without a comment, make a doctrinal pronouncement as to the propriety of a petition for mandamus vis-à-vis the rights and duties emanating from Article VII, Section 12 of the Constitution. Sadly, through an *ex parte* resolution, the majority seems comfortable with addressing and settling a doctrinal issue without due process of law and full adversarial deliberation between the parties.

I

The Petition at hand is one of first impression. It tackles a constitutional provision that has never been brought before this Court to be tested or defined. There is no existing jurisprudence that can unequivocally point us to the proper and legal resolution of the issues presented. As such, this Court must take the necessary journey to address the issues touching on the fundamental characteristics of a democracy: the sovereign, its representative state, the freedom of information, and open discourse in society.

Before this Court is an Extremely Urgent Petition for Mandamus filed by Dino S. De Leon, which seeks, among others, to compel President Rodrigo Roa Duterte and the Office of the President, through Executive Secretary Salvador C. Medialdea, to disclose all medical and psychological examination

results and other health records of the President since he assumed position.[1]

The majority, without asking for a comment, dismissed the Petition for lack of merit[2] and held that "petitioner fell short of making a *prima facie* case for *mandamus* by failing to establish a legal right that was violated by respondents."[3]

II

I convey my discomfort on how hastily this Court dismissed the petition without any responsive pleading from respondents. It is as if this Court itself supplied the arguments for the ease and convenience of the government.

It is true that an outright dismissal of a petition is discretionary upon this Court. It has the authority to dismiss a petition through a minute resolution or a full resolution stating all the reasons behind its dismissal, and may do so with or without a comment from respondents. However, given the procedural, substantive, and constitutional issues raised by the petitioner, I believe that it would be prudent for this Court to at least require the respondents to file the usual comment without necessarily giving due course to the Petition.

Similar to my dissent in *Reyes v. Commission on Elections*,[4] I respectfully register my opposition here, as I do not believe that there can be a fair outright dismissal of the case without at least a comment from respondents.

In *Reyes,* petitioner Regina Ongsiako Reyes filed a Petition for Certiorari assailing the Commission on Elections' resolution, which ordered the cancellation of her Certificate of Candidacy for Representative of the lone district of Marinduque. This Court, without requiring respondents to comment, found that the Commission on Elections did not commit any grave abuse of discretion in ruling on the case and dismissed Reyes' petition outright. In my dissent from the majority, I stated:

> A Comment is required so that there may be a fuller exposition of the issues from the point of view of the respondent. It is also required to prevent any suspicion that judges and justices litigate, not decide. This Court has expressed its disfavor of some judges, thus:
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> > We cannot close this opinion without expressing our disapproval of the action taken by Judge Tomas V. Tadeo in

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1 Petition, pp. 2–3.
2 Id. at 3
3 Id.
4 720 Phil. 174 (2013) [Per J. Perez, En Banc].

> filing his own motion for reconsideration of the decision of the respondent court. He should be admonished for his disregard of a well-known doctrine imposing upon the judge the duty of detachment in case where his decision is elevated to a higher court for its review. *The judge is not an active combatant in such proceeding and must leave it to the parties themselves to argue their respective positions and for the appellate court to rule on the matter without his participation.* The more circumspect policy is to recognize one's role in the scheme of things, remembering always that *the task of a judge is to decide and not to litigate.*[5] (Emphasis supplied)

It cannot be denied that the main Resolution, though brief, introduced a doctrine relating to Article VII, Section 12 of the Constitution without fully threshing out all the issues presented by petitioner. Ultimately, the decision will stand as a precedent insufficient to address all the intertwining rights and duties involved in the subject constitutional provision and will effectively leave the provision nugatory. Moreover, it is against the Internal Rules of the Supreme Court,[6] which requires more than an outright dismissal when a new doctrine is to be established. Rule 13, Section 6(a) of the Internal Rules of the Supreme Court states:

> SECTION 6. *Manner of Adjudication.* — The Court shall adjudicate cases as follows:
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> (a) By ***decision***, when the Court disposes of the case on its merits and its ***rulings have significant doctrinal values; resolve novel issues***; or impact on the social, political, and economic life of the nation. The decision shall state clearly and distinctly the facts and the law on which it is based. It shall bear the signatures of the Members who took part in the deliberation. (Emphasis supplied)

I agree with the insights of my colleagues, Senior Associate Justice Estela M. Perlas-Bernabe and Justice Amy C. Lazaro-Javier. While both Justices voted to dismiss the petition outright, both believe that a comment should have first been required since doctrine was introduced in resolving this novel issue. In light of this, it can no longer be said that a majority was reached.

The Petition brings to fore the constitutional right of the people to know the medical health of the President under Article VII, Section 12, as well as the fundamental right to information of the sovereign enshrined in Article II, Section 1 and Article III, Section 7 of the Constitution. I do not believe that this Court can automatically say that petitioner failed to establish a right and

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5 Id. at 308.

6 A.M. No. 10-4-20-SC (2010).

concomitantly, a duty on the part of the executive branch, without comment from respondents.

I disagree that, without comment from respondents, this Court can immediately decide that Article VII, Section 12, by itself or in relation to Article III, Section 7 and Article II, Section 1—along with the very concept of a representative and republic form of government—cannot be the source of a right or ministerial duty mentioned in the Petition.

Notably, it must be emphasized that this is the first Petition brought before this Court that asks to define the boundaries of the constitutional right of the people emanating from Article VII, Section 12 of the Constitution. As such, this Court should not pass upon this opportunity. In fact, we have a responsibility to address the substantial issues raised once and for all. This is at the very heart of judicial power, which includes "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."[7]

To resolve the matter without a comment sacrifices the impartiality of this Court by allowing considerations not present in the single pleading before us to dictate our action with our own interpretation of circumstances unaided by the perspectives of the respondents. I cannot agree with the conclusion that petitioner failed to establish a legal right, and that the relief sought does not constitute ministerial duties on the part of respondents.[8] In effect, we produced an argument that should have been raised by the respondents. Such a posture is procedurally unacceptable and may leave an impression that the Bench has lost its independence.

Judicial independence is imperative for a court to discharge its functions. From this emanates the courage to "make decisions that may be unpopular but nonetheless correct."[9] This is the bedrock of our country's judiciary. It was stated in *Borromeo v. Mariano*:[10]

> A history of the struggle for a fearless and an incorruptible judiciary prepared to follow the law and to administer it regardless of consequences, can be perused with ever-recurring benefit. Since the early days of the Republic, the judicial system in the United States, with certain exceptions which only served to demonstrate more fully the excellence of the whole, has been viewed with pride, and confidently relied upon for justice by the American people. The American people considered it necessary "that there should be a judiciary endowed with substantial and independent powers and secure against all corrupting or perverting influences; secure, also, against the arbitrary authority of the administrative heads of the government." It

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7 CONST., art. VIII, sec. 1.

8 *See* Ponencia, p.4.

9 J. Leonen, Dissenting Opinion in *Republic of the Philippines v. Sereno*, G.R. No. 237428, May 11, 2018, 863 SCRA, 1, 600 [Per J. Tijam, En Banc].

10 41 Phil. 322 (1921) [Per J. Malcolm, En Banc].

> was such a conception of an independent judiciary which was instituted in the Philippines by the American administration and which has since served as one of the chief glories of the government and one of the most priceless heritages of the Filipino people.[11] (Citations omitted)

This Court owes it to the people to remain steadfast in its role of protecting fundamental freedoms without any bias, prejudice, or partiality towards any of the parties. We must never take the position of an active combatant and must refrain from arguing for any party involved. It is the parties themselves who must fight for their respective positions and lay down their own defenses.

I am certain that if the government were requested to comment on the Petition, the argument raised in this Resolution dismissing the Petition would be more plainly stated and considered by both parties. We must resist the temptation to anticipate the actions of the other party, as this would only make us vulnerable to a charge that we are a servile court to the executive. We are not called to make arguments of our own making. Rather, we are called to hear the argument of respondents after they are properly given the opportunity to be heard.

A comment is essential to garner a full exposition of the issues from both parties. This will pave the way for a complete deliberation of the significant questions posed in the Petition and dissuade any thoughts of partiality on the part of the members of the Bench.

This Court must not elude its responsibility to address the substantive issues relating to a specific provision in Article VII as well as the fundamental right to information of the sovereign enshrined in various provisions in Article II and Article III of our basic law.

In my view, the outright dismissal of the Petition is ***highly irregular*** and constitutes a failure to carry out our responsibility to properly and accurately interpret Article VII, Section 12 of our Constitution in relation to the sovereign's right to information on their government's capability to represent them.

III

The Petition seeks for the disclosure of the President's health bulletins and medical records since he assumed office.[12] It insists that the Office of the

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[11] Id. at 329–330.

[12] Petition, p. 2.

President is obliged to do so,[13] citing Article VII,[14] Section 12 of the 1987 Constitution, which reads:

> 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. (Emphasis supplied)

What prompted petitioner to file this Petition were his observations with regard to: (a) the Presidents' recurrent cancellations of his engagements due to health concerns; (b) the various illnesses that the President himself publicly admitted; (c) the President's absences from the public view; and (d) the President's incoherence in the press conferences during the Enhanced Community Quarantine.[15] Attaching mostly news articles as his basis, petitioner elaborated on his reasons for filing:

> . . . .
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> 5. The President's personal presence is often necessary in different engagements. *However, on several occasions, he begged off from some engagements, often at the last minute, citing health reasons.* Among other engagements where President Duterte had to beg off at the last minute were:
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> a. January 3, 2020 scheduled visits to victims of the December 15, 2019 earthquake in Malalag and Padada, Davao Del Sur;
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> b. November 4, 2019 closing ceremony of 35th Association of Southeast Asian Nations Summit in Nonthaburi, Thailand;
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> c. November 4, 2019 3rd Regional Comprehensive Economic Partnership (RCEP) Summit in Nonthaburi, Thailand;
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> d. October 22 and 23, 2019 Emperor's Banquet and Prime Minister's Banquet after enthronement ceremony for Japanese Emperor Naruhito;
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> e. September 24, 2019 Armed Forces of the Philippines change of command;
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> f. August 26, 2019 National Heroes' Day rites in Luneta;
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> g. May 9, 2019 Hugpong ng Pagbabago campaign rally;
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> h. April 26, 2019 Belt and Road Forum's gala dinner;
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> i. April 22, 2019 Boao Forum of Asia Manila Conference;

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13 Id. at 8.
14 Executive Department.
15 Petition, pp.4–7.

j. April 12, 2019 PDP-Laban campaign rally in Marawi City;

k. March 15, 2019 awarding of certificates of land ownership and PDP-Laban campaign rally in Davao City;

l. November 30, 2018 Bonifacio Day ceremony;

m. November 14, 2018 ASEAN meetings with partner countries and working lunch;

n. October 3, 2018 Philippine Amusement Gaming Corporation event in Malacañang;

o. June 30,2017 Independence Day ceremony;

p. September 8, 2016 ASEAN-US and ASEAN-India summits;

q. Photo-op of ASEAN leaders with US President Barack Obama, also during September 2016 Laos Conference;

r. November 20,2016 APEC family photo and APEC Economic Leader's Retreat;

s. November 19, 2016 APEC Gala Dinner hosted by Peru President Pedro Pablo Kuczynski;

t. November 11, 2016 Go Negosyo summit in Davao; and

u. February 11,2016 speaking engagement at a medical association event when he was rushed to the hospital and stayed there overnight.

6. President Duterte has also *personally and publicly admitted* that he is suffering from the following medical conditions:

a. Buerger's Disease;
b. Barrett's Esophagus;
c. Gastroesophageal Reflux Disease;
d. Spinal issues;
e. Daily migraines; and
f. Myasthenia gravis

7. Apart from the above, President Duterte has been observed to have prolonged absences from the public view:

a. August 11-18, 2019 (7 days);
b. May 14-20,2019 (7 days);
c. April 29-May 4, 2019 (6 days);
d. June 20-26, 2017 (6 days); and
e. June 12-16, 2017 (5 days).

8. Throughout these periods of absence[s], there were no medical bulletins released, nor was there any detailed explanation from his office about the President's prolonged absence. On the contrary, even after figuring in a motorcycle accident, Presidential Spokesperson Salvador Panelo refused to disclose the status of the President's health, citing *"a lack of serious illnesses as stated by the Constitution."*

9. Of late, the *President has been seen as rather sickly and miserably incoherent in his press conferences,* specifically over the period of the Enhanced Community Quarantine.

[10.] Thus, [o]n March 12, 2020, after hearing the latter's COVID-19 live press conference on the same date, Petitioner, as a citizen deeply worried about the health of the President, duly filed a Freedom of Information Request addressed to the Office of the President. To put the request in context, during said press conference, the President was not able to answer questions intelligibly. For example, he uttered incoherent gibberish when asked a question on the lack of testing kits:

> ...The kit can be distributed to the different health centers, but at this time kung kulang they can be brought to a testing station... to RITM.
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> Kokonti lang kasi... Eh the kit, is the kit, meron naming lumalabas pa... I think that... sabi ko nga... in every epoch, maybe merun nung una, Bubonic Plague, mga gago and tao no'n, tamang-tama lang...
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> Tapos yung sa Spanish Flu, right before the wars, kawawa yung mga tao... pero mas kawawa yung sa Middle East... The so-called Roman Empire... You have read the inquisition, kung may birth mark ka you are a witch, and you are burned at stake.

[11] Given the seeming confusion and through the FOI request, Petitioner sought to be clarified once and for all on the status of the health of the President. Thus, the FOI Request asked for copies of the latest medical examination results, health bulletins, and other health records of the President so that the public may be assured of the status of his health during the crisis.[16] (Emphasis supplied, citations omitted)

. . . .

It is clear from the foregoing that the Petition has enough allegations to raise a reasonable concern about the President's true state of health. The President's public admission of his illnesses, together with the other stated manifestations, suggests that his current health may possibly be failing which, in a way, could affect the faithful performance of his duties.

Moreover, the crucial issues relating to the President's present health conditions ***demand*** this Court's proper legal interpretation of Article VII, Section 12. The determination of whether his alleged ailments are the kinds that the public ought to know entails our construing of what comprises "serious illness"[17] under the Constitution. In consonance with this Court's "role to interpret the Constitution and act in order to protect constitutional

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16 Id.

17 CONST., art. VII, sec. 12.

rights when these become exigent,"[18] it is our responsibility to settle this matter promptly and conclusively.

Hence, while we generally adhere to judicial hierarchy, I believe that the issues raised in this petition have ***transcendental importance.*** As such, it may be directly resolved by this Court.

Under the 1987 Constitution, this Court has original jurisdiction over petitions for certiorari, prohibition, mandamus, *quo warranto* and *habeas corpus*.[19] Nevertheless, the competence to issue the extraordinary writs of certiorari, prohibition, and mandamus is not exclusive and is shared with both the Court of Appeals and the Regional Trial Courts.[20]

The original jurisdiction shared with the lower courts,[21] however, does not warrant an unbridled discretion as to the parties' forum of choice.[22] The doctrine on hierarchy of courts dictates the proper venue where petitions for extraordinary writs shall be brought. Accordingly, "[p]arties cannot randomly select the court or forum to which their actions will be directed."[23]

As a matter of judicial policy, the doctrine on hierarchy of courts prevents the over-clogging of this Court's dockets and precludes any unwarranted demands upon its time and consideration. In *Aala v Uy*:[24]

> *The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets.* Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter [,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."[25] (Emphasis supplied, citations omitted)

The doctrine is a filtering mechanism which, according to *Gios-Samar, Inc. v. Department of Transportation and Communication,*[26] allows the Court

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18 *The Diocese of Bacolod v. Commission on Elections,* 751 Phil. 301, 330 (2015) [Per J. Leonen, En Banc].

19 *See* CONST., art. VIII, sec. 5(1).

20 *Ha Datu Tawahig v. Lapinid,* G.R. No. 221139, March 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> [Per J. Leonen, Third Division].

21 Id.

22 *Aala v. Uy,* 803 Phil. 36 (2013) [Per J. Leonen, En Banc].

23 Id. at 37.

24 803 Phil. 36 (2013) [Per J. Leonen, En Banc].

25 Id. at 36–37.

26 G.R. No. 217158, March 19, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

"to focus on more fundamental and essential tasks assigned to it by the highest law of the land."[27] Corollary, it works to:

> . . . (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.[28] (Citation omitted)

The doctrine guarantees that courts in every level efficiently and effectively carry out their designated roles according to their competencies. In *Diocese of Bacolod v. COMELEC*:[29]

> *The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner.* Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
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> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
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> 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.[30] (Emphasis supplied, citations omitted)

Nonetheless, the doctrine on hierarchy of courts "may be relaxed when the redress desired cannot be obtained in the appropriate courts or where

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27 Id.
28 Id.
29 751 Phil. 301 (2015) [Per J. Leonen, En Banc].
30 Id. at 329–330.

exceptional and ***compelling*** circumstances justify availment of the remedy within and calling the exercise of this Court's primary jurisdiction."[31] Simply put, it is "not an iron clad rule"[32] and admits of the following exceptions:

> In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; **(2) when the case involves transcendental importance**; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[33] (Emphasis supplied, citation omitted)

In cases concerning issues of transcendental importance, "the imminence and clarity of the *threat* to fundamental constitutional rights outweigh the necessity for prudence."[34] Hence, "[t]he doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection."[35]

The importance of an informed public in a democracy[36] cannot be gainsaid. The right of the people to information "allow[s] the citizenry to form intelligent opinions and hold people accountable for their actions."[37] Given that the Petition accentuates an imminent threat to this constitutionally protected right,[38] an immediate recourse before this Court is undoubtedly warranted.

IV

The duty to disclose the President's health condition in case of serious illness[39] accords with the fundamental right of the people to information and with the very concept of a representative form of government.

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31 *Province of Batangas v. Romulo*, 473 Phil. 806, 826–827 (2004) [Per J. Callejo, Sr., En Banc].

32 *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 330 (2015) [Per J. Leonen, En Banc].

33 *Aala v. Uy*, 803 Phil. 36, 57 (2017) [Per J. Leonen, En Banc].

34 *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 332 (2015) [Per J. Leonen, En Banc].

35 Id.

36 *See Valmonte v. Belmonte, Jr.*, 252 Phil. 264 (1989) [Per J. Cortes, En Banc].

37 *Roque, Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 939 (2017) [Per J. Leonen, Second Division]. Although the case involves a Petition to Cite for Indirect Contempt, it recognized the people's right to information on matters concerning public interest.

38 *See* CONST., art. III, sec. 7.

39 CONST., art. VII, sec. 12.

Article II[40] of the 1987 Constitution provides that the Philippines is a democratic and republican state:

> Section 1. The Philippines is a democratic and republican State. *Sovereignty resides in the people and all government authority emanates from them.*

Pertinent thereto is Article III,[41] Section 7, which reads:

> 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 freedom of information is the instrument that empowers the people. The right to information is so central to a representative government such as ours that it was integrated as an enforceable constitutional right. It was enunciated in *Legaspi v. Civil Service Commission*:[42]

> *The incorporation in the Constitution of a guarantee of access to information of public concern is a recognition of the essentiality of the free flow of ideas and information in a democracy*[.] In the same way that free discussion enables members of society to cope with the exigencies of their time[,] access to information of general interest aids the people in democratic decision-making. . . by giving them a better perspective of the vital issues confronting the nation.[43] (Emphasis supplied, citations omitted)

It is the access to information that apprises the people of their leader's actions and gives the citizens an opportunity to shape the landscape they live in by making informed decisions. It makes them capable of exercising their rights and protecting the same against actions of the state. The access of a citizen to information is a basic requirement for the functioning of a democratic society.

In *Valmonte v. Belmonte, Jr.*,[44] this Court explained the significance of the people's right to information in a democratic government setting. There, a group of media practitioners filed a Petition for Mandamus before this Court praying that they be given access by the Government Service Insurance System (GSIS) to pertinent documents relating to loans of some Batasang Pambansa members which were allegedly granted due to the intervention of then First Lady Imelda Marcos.[45] In granting the petition, this Court upheld petitioners' right to information, explaining:

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40 Declaration of Principles and State Policies.
41 Bill of Rights.
42 234 Phil. 521 (1987) [Per J. Cortes, En Banc].
43 Id. at 525.
44 252 Phil. 264 (1989) [Per J. Cortes, En Banc].
45 Id.

> An informed citizenry with access to the diverse currents in political, moral and artistic thought and data relative to them, and the free exchange of ideas and discussion of issues thereon, is vital to the democratic government envisioned under our Constitution. The cornerstone of this republican system of government is delegation of power by the people to the State. In this system, governmental agencies and institutions operate within the limits of the authority conferred by the people. Denied access to information on the inner workings of government, the citizenry can become prey to the whims and caprices of those to whom the power had been delegated. The postulate of public office as a public trust, institutionalized in the Constitution (in Art. XI, Sec. 1) to protect the people from abuse of governmental power, would certainly be mere empty words if access to such information of public concern is denied, except under limitations prescribed by implementing legislation adopted pursuant to the Constitution.
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> The right to information is an essential premise of a meaningful right to speech and expression. But this is not to say that the right to information is merely an adjunct of and therefore restricted in application by the exercise of the freedoms of speech and of the press. Far from it. The right to information goes hand-in-hand with the constitutional policies of *full public disclosure [and] honesty in the public service[.]* It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.[46] (Emphasis in the original)

In *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*,[47] it was explained that the right to information is concomitant with the government's policy of full disclosure and transparency. In that case, petitioners sought to compel the Commission on Elections to disclose or publish the names of the nominees of various party-list groups for the May 2007 elections. This Court granted the petition, finding that the public has the right to be informed of who they were electing as representatives. Thus, it ordered the Commission to immediately disclose and release the names of the nominees of the party-list groups, sectors, or organizations accredited to participate in the 2007 elections.[48] In ruling for petitioners, this Court elucidated:

> Complementing and going hand in hand with the right to information is another constitutional provision enunciating the policy of full disclosure and transparency in Government. We refer to Section 28, Article II of the Constitution reading:
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> > Sec. 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.
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> *The right to information is a public right where the real parties in interest are the public, or the citizens to be precise. And for every right of*

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46 Id. at 270–272.

47 551 Phil. 1 (2007) [Per J. Garcia, En Banc].

48 Id.

> *the people recognized as fundamental lies a corresponding duty on the part of those who govern to respect and protect that right. This is the essence of the Bill of Rights in a constitutional regime. Without a government's acceptance of the limitations upon it by the Constitution in order to uphold individual liberties, without an acknowledgment on its part of those duties exacted by the rights pertaining to the citizens, the Bill of Rights becomes a sophistry.*
>
> By weight of jurisprudence, any citizen can challenge any attempt to obstruct the exercise of his right to information and may seek its enforcement by *mandamus*. And since every citizen by the simple fact of his citizenship possesses the right to be informed, objections on ground of *locus standi* are ordinarily unavailing.[49] (Emphasis supplied, citations omitted)

As illustrated above, the people's right to information will only be effective if there is a willingness for transparency on the part of the government. Considering that the government is meant to serve the public, giving its citizens access to information is central in holding the public officials accountable for their actions and policies. Through the knowledge acquired by the public, they may gauge if their officials have proven themselves capable and efficient. The significance of Article II, Section 28 and Article III, Section 7 of the Constitution working hand in hand is highlighted in *Sabio v. Gordon*:[50]

> These twin provisions of the Constitution seek to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to enable them to exercise effectively their constitutional right. Armed with the right to information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. In *Valmonte v. Belmonte, Jr.* the Court explained that an informed citizenry is essential to the existence and proper functioning of any democracy, thus:
>
> > 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. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit.[51] (Citation omitted).

However, the right to information is not absolute and should only be carried out when it concerns the public interest:[52]

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49 Id. at 12–13.

50 (2006) 535 Phil. 687 (2006) [Per J. Sandoval-Gutierrez, En Banc].

51 Id. at 707–708.

52 *Legaspi v. Civil Service Commission*, 234 Phil. 521 (1987) [Per J. Cortes, En Banc].

> It follows that, in every case, the availability of access to a particular public record must be circumscribed by the nature of the information sought, i.e., (a) *being of public concern or one that involves public interest,* and, (b) not being exempted by law from the operation of the constitutional guarantee.[53] (Emphasis supplied)

From the foregoing pronouncements, it is evident that the President's health (in case of any serious illness) is a matter of public concern and interest. Under Article VII, Section 12, it is imperative upon the government to ensure that the public is made aware of the President's true state of health. It is the right of the people to be informed, and much more to be assured, that the President they elected is the one leading the country at all times and is physically and mentally competent to do so.

Furthermore, as a public officer, the President has a limited reasonable expectation of privacy. In *Ayer Productions Pty. Ltd. v. Capulong*,[54] it was explained that the right to privacy, like the right to information, is not absolute. It may be intruded upon when the person involved is a public figure and the information sought is of public concern:

> *A limited intrusion into a person's privacy has long been regarded as permissible where that person is a public figure and the information sought to be elicited from him or to be published about him constitute matters of a public character.* Succinctly put, the right of privacy cannot be invoked to resist publication and dissemination of matters of public interest. The interest sought to be protected by the right of privacy is the right to be free from "*unwarranted* publicity, from the *wrongful* publicizing of the private affairs and activities of an individual *which are outside the realm of legitimate public concern.*"[55] (Emphasis supplied, citations omitted)

Indubitably, the President cannot hide behind a claim of right to privacy. He must surrender to public scrutiny.

Neither can the President, as the incumbent, assert that he is immune from suit. In 1910, the doctrine of executive or presidential immunity emanated as a case law[56] in *Forbes v. Chuoco Tiaco*.[57] In that case, the respondent, a Chinese national, was able to procure a writ of injunction before the Court of First Instance (CFI) of Manila, which prohibited the then Governor General and two (2) other high-ranking officials from deporting him to Amoy, China.

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53 Id. at 534.
54 243 Phil. 1007 (1988) [Per J. Feliciano, En Banc].
55 Id. at 1018–1019
56 *Estrada v. Desierto* (2001) 406 Phil. 1 [Per J. Puno, En Banc]
57 16 Phil. 534 (1910) [Per J. Johnson, First Division]

Claiming that the act complained of was done in their official capacity and in furtherance of public interest, the government officials involved filed a petition for a writ of prohibition before this Court in order to restrain the CFI Judge from proceeding with the case. In resolving Tiaco's accompanying claim for damages against the Governor General, who is also the government's "chief executive authority in all civil affairs," [58] this Court explained:

> It may be argued, however, that the present action is one to recover damages against the Governor and the others mentioned in the cause, for the illegal acts performed by them, and not an action for the purpose of in any way controlling or restraining or interfering with their political or discretionary duties. *No one can be held legally responsible in damages or otherwise for doing in a legal manner what he had authority, under the law, to do.* Therefore, if the Governor-General had authority, under the law, to deport or expel the defendants, and the circumstances justifying the deportation and the method of carrying it out are left to him, then he cannot be held liable in damages for the exercise of this power. Moreover, if the courts are without authority to interfere in any manner, for the purpose of controlling or interfering with the exercise of the political powers vested in the chief executive authority of the Government, then it must follow that the courts can not intervene for the purpose of declaring that he is liable in damages for the exercise of this authority. Happily we are not without authority upon this question. This precise question has come before the English courts on several different occasions.
>
> . . . .
>
> If it be true that the Government of the Philippine Islands is a government invested with "all the military, civil, and judicial powers necessary to govern the Philippine Islands until otherwise provided by Congress" and that the Governor-General is invested with certain important political duties and powers, in the exercise of which he may use his own discretion, and is accountable only to his superiors in his political character and to his own conscience, and the judicial department of the Government is without authority to interfere in the control of such powers, for any purpose, then it must follow that the courts cannot take jurisdiction in any case against him which has for its purpose the declaration that such acts are illegal and that he is, in consequence, liable for damages. To allow such an action would, in the most effective way possible, subject the executive and political departments of the Government to the absolute control of the judiciary. Of course, it will be observed that we are here treating only with the political and purely executive duties in dealing with the political rights of aliens. The conclusions herein reached should not be extended to cases where vested rights are involved. That question must be left for future consideration. . . .[59] (Emphasis supplied)

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58 Id. at 573.

59 Id. at 578–580.

Although no explicit provision on presidential immunity is found in our present Constitution, this Court continued to acknowledge the existence of such privilege[60] in the following cases.

In the 1986 case of *Saturnino v. Bermudez,*[61] a Petition for Declaratory Relief which amounted to an indirect suit against the then sitting President was dismissed outright due to this Court's recognition that "incumbent Presidents are immune from suit or from being brought to court during the period of their incumbency and tenure."[62] The rationale behind the principle was elucidated in *Soliven v. Makasiar.*[63] There, this Court dismissed petitioner Beltran's claim that the President cannot commence the criminal action since the latter's immunity from suit allegedly imposes a concomitant disability to file one. In ruling against petitioner, this Court stated:

> *The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention.*
>
> But this privilege of immunity from suit, pertains to the President by virtue of the office and may be invoked only by the holder of the office; not by any other person in the President's behalf. Thus, an accused in a criminal case in which the President is complainant cannot raise the presidential privilege as a defense to prevent the case from proceeding against such accused.
>
> Moreover, there is nothing in our laws that would prevent the President from waiving the privilege. Thus, if so minded the President may shed the protection afforded by the privilege and submit to the court's jurisdiction. The choice of whether to exercise the privilege or to waive it is solely the President's prerogative. It is a decision that cannot be assumed and imposed by any other person.[64] (Emphasis supplied)

In *Estrada v. Desierto,*[65] this Court explained the extent of presidential immunity in order to resolve whether former President Joseph Estrada, after being ousted from office in 2001, was still within the ambit of the privilege with regard to several cases filed against him before the Office of the Ombudsman.[66] In dismissing Estrada's petition, this Court underscored that pertinent constitutional policies will be undermined if it upheld his assertion that "a non-sitting president enjoys immunity from suit for criminal acts committed during his incumbency."[67]

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60 J. Leonen, Concurring Opinion in *De Lima v. Duterte*, G.R. No. 227635, October 15, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65820> [Per C.J. Bersamin, En Banc].

61 229 Phil. 185 (1986) [Per Curiam, En Banc].

62 Id. at 187.

63 249 Phil. 394 (1988) [Per Curiam, En Banc].

64 Id. at 400–401.

65 406 Phil. 1 (2001) [J. Puno En Banc].

66 Id.

67 Id. at 78.

Meanwhile, in resolving the constitutionality of certain presidential issuances questioned in *David v. Macapagal-Arroyo*,[68] this Court declared that it was inappropriate to implead the then President as party-respondent for the following reasons:

> Incidentally, it is not proper to implead President Arroyo as respondent. *Settled is the doctrine that the President, during his [or her] tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law.* It will degrade the dignity of the high office of the President, the Head of State, if he [or she] can be dragged into court litigations while serving as such. Furthermore, it is important that he [or she] be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his [or her] official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his [or her] usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he [or she] remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.[69] (Citations omitted, emphasis supplied)

Thus, in the recent case of *De Lima v. Duterte,*[70] Senator Leila De Lima filed a Petition for the issuance of a writ of *habeas data*, seeking to restrain incumbent President Duterte from making threats and public statements allegedly violative of her right to privacy, life, liberty, and security. This Court dismissed De Lima's Petition on account of the President's immunity from suit during his incumbency.[71]

We have seen from the cases above, particularly in *Forbes* and *De Lima,* that the mantle of presidential immunity pertains to ***acts*** of the President. Unlike the cases cited, the Petition at hand is not directed to a particular action or deed committed by the incumbent. Petitioner, driven by apparent manifestations that raised reasonable concerns, merely seeks for the disclosure of pertinent medical records instrumental in determining not only the President's true state of health, but also his fitness to lead. Resultantly, under the given circumstances, the President cannot aptly invoke the protection afforded by the privilege.

At the same time, the President cannot hide behind his executive privilege, particularly, the executive's deliberative process privilege.

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68 522 Phil. 705 (2006) [Per J. Sandoval - Gutierrez, En Banc].

69 Id. at 763–764.

70 G.R. No. 227635, October 15, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65820> [Per C.J. Bersamin, En Banc].

71 Id.

Executive privilege is "the right of the President and high-level executive branch officers to withhold information from Congress, the courts, and ultimately the public"[72] for the sake of national security and public interest. In explaining the necessity of executive privilege, this Court in *Almonte v. Vasquez*[73] adapted the United States jurisprudence, stating:

> The expectation of a President to the confidentiality of his conversations and correspondences, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution[.][74] (Citation omitted)

In *Neri v. Senate Committee on Accountability of Public Officers and Investigations,*[75] the two (2) types of executive privilege were identified as: (1) presidential communications privilege, which are "communications, documents or other materials that reflect presidential decision-making and deliberations"[76][;] and (2) deliberative process privilege, which pertains to "advisory opinions, recommendations and deliberations"[77] comprising part of a process by which governmental decisions and policies are formulated. They were further differentiated, thus:

> Presidential communications privilege applies to decision-making of the President while, the deliberative process privilege, to decision-making of executive officials. The first is rooted in the constitutional principle of separation of power and the President's unique constitutional role; the second on common law privilege. Unlike the deliberative process privilege, the presidential communications privilege applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones. As a consequence, congressional or judicial negation of the presidential communications privilege is always subject to greater scrutiny than denial of the deliberative process privilege.[78] (Citation omitted)

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72 *Department of Foreign Affairs v. BCA International Corp.*, 788 Phil. 704, 754–755 (2016) [Per J. Carpio, Second Division] citing *Senate v. Ermita*, 522 Phil. 1, 37 (2006) [Per J. Carpio-Morales, En Banc].

73 314 Phil. 150 (1995) [Per J. Mendoza, En Banc].

74 Id. at 168.

75 572 Phil. 554 (2008) [Per J. Leonardo-De Castro, En Banc]

76 Id. at 645.

77 Id.

78 Id.

Presidential communications privilege allows the president confidentiality to protect state secrets, diplomatic relations, and national security. On the other hand, the deliberative process privilege ensures "a frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties."[79] In *Akbayan Citizens Action Party v. Aquino,*[80] this Court characterized deliberative process privilege by adapting United States jurisprudence in this wise:

> As discussed by the U.S. Supreme Court in *NLRB v. Sears, Roebuck & Co,* deliberative process covers documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated. Notably, the privileged status of such documents rests, not on the need to protect national security but, on the "obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news", the objective of the privilege being to enhance the quality of agency decisions.[81] (Citations omitted)

Through the principle of deliberative process privilege, free discourse and debate among government officials is preserved by removing the threat of such conversations being disclosed to the public. The privilege prevents deliberative communications from being stifled for fear of criticism for opinions different from the majority.

While executive privilege stands as an exception to the public's right to information and the government's duty to disclose, the President cannot avail of such exception. In *Senate of the Phils. v. Ermita,*[82] this Court enunciated that despite the constitutional nature of executive privilege, it remains to be the exception to the general rule. This Court stated:

> From the above discussion on the meaning and scope of executive privilege, both in the United States and in this jurisdiction, a clear principle emerges. Executive privilege, whether asserted against Congress, the courts, or the public, is recognized only in relation to *certain types of information of a sensitive character.* While executive privilege is a constitutional concept, a *claim* thereof may be valid or not depending on the ground invoked to justify it and the context in which it is made. Noticeably absent is any recognition that executive officials are exempt from the duty to disclose information by the mere fact of being executive officials. Indeed, *the extraordinary character of the exemptions indicates that the presumption inclines heavily* ***against*** *executive secrecy and in favor of disclosure.*[83] (Emphasis in the original)

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79 *In re Production of Court Records and Documents and the Attendance of Court Officials and Employees,* February 14, 2012 (Notice).

80 580 Phil. 422 (2008) [Per J. Carpio-Morales, En Banc].

81 Id. at 475.

82 522 Phil. 1 (2006) [Per J. Carpio-Morales, En Banc].

83 Id. at 42.

Even if executive privilege were invoked in this case, neither the privilege of presidential communication nor that of deliberative process would apply.

It is apparent that the President's current state of health does not involve a document related to state secrets, diplomatic relations, and national security, which removes it from the shield of confidential presidential communications.

Moreover, it does not form part of any decision-making process or deliberation of the executive branch. The information asked by petitioner is neither pre-decisional nor deliberative, the two (2) elements of deliberative process. For a communication to be pre-decisional, it must have been made in an "attempt to reach a final conclusion."[84] To be considered deliberative, it must reflect the exchange or discussion within a certain governmental agency.[85] Seeing as the information sought by petitioner does not satisfy any of the elements above, deliberative process privilege will not apply. Here, the information petitioner seeks does not touch the President's formulation of government decisions or policies, but merely inquires on the President's true and current state of health, which is a qualification required for one to hold the position of President.

It is equally important to emphasize that in case of any serious illness or permanent incapacity, the President's functions cannot be simply delegated to any elected or unelected official—except to the Vice President. This is made clear in the line of succession laid down under Article VII, Section 8 of the Constitution, which states:

> 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. (Emphasis supplied)

Any undue delegation would be unauthorized and unsanctioned not only by law, but by the very people that the government is meant to serve.

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84 *In re Production of Court Records and Documents and the Attendance of Court Officials and Employees*, February 14, 2012 (Notice).

85 Id.

V

With the right of the people to know the President's health condition, Article VII, Section 12 cannot be discretionary on the President and his office, and the executive cannot be left to decide what would constitute serious illness and what would be the appropriate means of releasing the sought information to the public.

I encourage my colleagues to take caution when using Constitutional Commission deliberations as basis for interpreting the intent behind a certain provision. While the deliberations are useful in shedding light on the discussions of the framers for the wording of a certain provision, these exchanges are only between the people then present and do not necessarily reflect the insights of all the framers or people that ratified the basic law. In *Civil Liberties Union v. Executive Secretary,*[86] it was held:

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. *Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the Constitution from what appears upon its face."* The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof.[87] (Emphasis supplied, citations omitted)

As stated above, resort to other aids outside of the Constitution should only be done when its plain meaning is not available on its face. Its interpretation must begin with how its terms are couched. This was further explained in *David v. Senate Electoral Tribunal*:[88]

> To the extent possible, words must be given their ordinary meaning; this is consistent with the basic precept of *verba legis*. The Constitution is truly a public document in that it was ratified and approved by a direct act of the People: exercising their right of suffrage, they approved of it through a plebiscite. The preeminent consideration in reading the Constitution, therefore, is the People's consciousness: that is, popular, rather than technical-legal, understanding. Thus:
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> > We look to the language of the document itself in our search for its meaning. We do not of course stop there, but

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86 272 Phil. 147 (1991) [Per CJ. Fernan, En Banc].
87 Id. at 169–170.
88 795 Phil. 529 (2016) [Per J. Leonen, En Banc].

> that is where we begin. *It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails.* As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. *What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say.* Thus, these are the cases where the need for construction is reduced to a minimum[.][89] (Emphasis supplied, citations omitted)

Applying the principle of *verba legis* to the constitutional provision in question, it is apparent that Article VII, Section 12 does not state, whether impliedly or explicitly, that the President is given the discretion on when and how to inform the public of his health. The constitutional provision itself only states that "[i]n case of serious illness of the President, the public shall be informed of the state of his health."[90] The ordinary meaning of the terms used in the provision is a clear directive that it is needless to consult the Constitutional Commission's deliberations on the matter.

Even assuming that the deliberations were persuasive, they are not binding upon this Court. The exchanges among the framers neither dictate the intent of the people that ratified the basic law nor reflect the context in which we currently move in. The deliberations cannot control the interpretation of the constitutional provision as they have not considered the current crisis plaguing the country today which calls for a heightened scrutiny of our public officials. While the words of the law are static, their interpretation must be fluid to ensure that the rights of the people are protected no matter the situation.

In order to comply with the standards of the constitutional right to information, as well as the duty of the government to full disclosure and transparency, what the President may submit is a ***complete*** health bulletin from a doctor of his choice which enumerates and explains the diseases, medications, and treatments of the President. Only this can properly illustrate what the present condition of the President is.

Assuming that the President's previous extemporaneous announcements regarding his health could be considered sufficient compliance to the constitutional provision, which would render the demand

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89 Id. at 570–571.

90 CONST., art. VII, sec. 12.

for disclosure moot, this case can still be appropriately reviewed by this Court. In *Mattel, Inc. v. Francisco*[91] this Court cited the instances and exceptional cases wherein it decided to resolve the issue presented despite it being moot:

> Admittedly, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. After all, the "moot and academic" principle is not a magical formula that can automatically dissuade the courts from resolving a case. *Courts will decide cases, otherwise moot and academic, if:* first, there is a grave violation of the Constitution; *second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.*
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> Thus, in *Constantino v. Sandiganbayan (First Division)*, Constantino, a public officer, and his co-accused, Lindong, a private citizen, filed separate appeals from their conviction by the Sandiganbayan for violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. While Constantino died during the pendency of his appeal, the Court still ruled on the merits thereof, considering the exceptional character of the appeals of Constantino and Lindong in relation to each other; that is, the two petitions were so intertwined that the absolution of the deceased Constantino was determinative of the absolution of his co-accused Lindong.
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> In *Public Interest Center, Inc. v. Elma*, the petition sought to declare as null and void the concurrent appointments of Magdangal B. Elma as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) for being contrary to Section 13, Article VII and Section 7, par. 2, Article IX-B of the 1987 Constitution. While Elma ceased to hold the two offices during the pendency of the case, the Court still ruled on the merits thereof, considering that the question of whether the PCGG Chairman could concurrently hold the position of CPLC was one capable of repetition.
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> In *David v. Arroyo*, seven petitions for *certiorari* and prohibition were filed assailing the constitutionality of the declaration of a state of national emergency by President Gloria Macapagal-Arroyo. While the declaration of a state of national emergency was already lifted during the pendency of the suits, this Court still resolved the merits of the petitions, considering that the issues involved a grave violation of the Constitution and affected the public interest. The Court also affirmed its duty to formulate guiding and controlling constitutional precepts, doctrines or rules, and recognized that the contested actions were capable of repetition.
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> In *Pimentel, Jr. v. Ermita*, the petition questioned the constitutionality of President Gloria Macapagal-Arroyo's appointment of acting secretaries without the consent of the Commission on Appointments while Congress was in session. While the President extended *ad interim* appointments to her appointees immediately after the recess of Congress, the Court still resolved the petition, noting that the question of the constitutionality of the President's appointment of department secretaries in

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[91] 582 Phil. 492 (2008) [Per J. Austria-Martinez, Third Division].

acting capacities while Congress was in session was one capable of repetition.

In *Atienza v. Villarosa*, the petitioners, as Governor and Vice-Governor, sought for clarification of the scope of the powers of the Governor and Vice-Governor under the pertinent provisions of the Local Government Code of 1991. While the terms of office of the petitioners expired during the pendency of the petition, the Court still resolved the issues presented to formulate controlling principles to guide the bench, bar and the public.

In *Gayo v. Verceles*, the petition assailing the dismissal of the petition for *quo warranto* filed by Gayo to declare void the proclamation of Verceles as Mayor of the Municipality of Tubao, La Union during the May 14, 2001 elections, became moot upon the expiration on June 30, 2004 of the contested term of office of Verceles. Nonetheless, the Court resolved the petition since the question involving the one-year residency requirement for those running for public office was one capable of repetition.

In *Albaña v. Commission on Elections*, the petitioners therein assailed the annulment by the Commission on Elections of their proclamation as municipal officers in the May 14, 2001 elections. When a new set of municipal officers was elected and proclaimed after the May 10, 2004 elections, the petition was mooted but the Court resolved the issues raised in the petition in order to prevent a repetition thereof and to enhance free, orderly, and peaceful elections.[92] (Emphasis supplied, citations omitted)

As in the cases above, the Petition falls within the category of an exceptional case which, even if moot, should be resolved if only to finally "formulate guiding and controlling constitutional principles, precepts, doctrines or rules for future guidance of both bench and bar."[93] The questions posed by petitioner do not merely concern him, but the entire nation as well.

VI

With the President's state of health in times of serious illness being of public concern, the duty to disclose under Article VII, Section 12 is not only imperative, but more so becomes ministerial. Accordingly, mandamus lies.

Rule 65,[94] Section 3 of the 1997 Rules of Procedure[95] reads:

SECTION 3. *Petition for Mandamus. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station,* or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain,

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92 Id. at 501–504.
93 Id. at 504.
94 Certiorari, Prohibition and Mandamus.
95 Rules of Court, Rules of Procedure, as Amended (April 8, 1997).

> speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
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> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis supplied)

Mandamus is a directive by a court of law of competent jurisdiction pointed to some inferior court, tribunal, or person compelling the performance of a specific duty arising from official station or from the operation of law.[96] The remedy is of public character and cannot be "resorted to for the purpose of enforcing the performance of duties in which the public has no interest."[97] It is the appropriate "recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when the public right involved is mandated by the Constitution."[98]

Thus, in order to successfully invoke the writ, there must be a co-existence between petitioner's clear legal right and a concomitant duty "incumbent upon respondents to perform an act, this duty being imposed upon them by law."[99] Apart from these, "there should [also] be no plain, speedy, and adequate remedy in the ordinary course of law[.]"[100] This means that mandamus can only be issued when the common "modes of procedure and forms of remedy are powerless to afford relief."[101]

In this case, petitioner's insistence on the disclosure of the President's health is grounded on the fundamental right of the people to information on matters of public concern,[102] which is a public right.[103] As a citizen, petitioner has the clear legal right to the relief he seeks since he is deemed "part of the general 'public' which possesses the right."[104]

On the other hand, the government has the duty to protect and respect such right. Therefore, respondents "are ***without*** discretion in refusing disclosure of, or access to, information of public concern."[105] The duty to

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96 *Association of Retired Court of Appeals Justices, Inc. v. Abad, Jr.*, G.R. No. 210204, July 10, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64363> [Per J. Velasco, Jr., En Banc].

97 *Uy Kiao Eng v. Lee*, 624 Phil. 200, 206 (2010) [Per J. Nachura, Third Division].

98 Id.

99 *Lihaylihay v. Tan*, G.R. No. 192223, July 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64362 [Per J. Leonen, Third Division].

100 *Uy Kiao Eng v. Lee*, 624 Phil. 200, 209 (2010) [Per J. Nachura, Third Division].

101 Id.

102 Petition, pp. 32–36.

103 *Legaspi v. Civil Service Commission*, 234 Phil. 521 (1987) [Per J. Cortes, En Banc].

104 Id. at 530.

105 Id. at 532.

disclose becomes ministerial upon them, and any contrary act on their part will enable the issuance of the writ of mandamus.

Also, in this case, there is no other plain, speedy, and adequate remedy to acquire the information sought for. Petitioner alleged that after seeing the President's incoherence in the press conferences during the Enhanced Community Quarantine,[106] he was impelled to file a Freedom of Information (FOI) request before the Office of the President on March 11, 2020,[107] the relevant portions of which read:

. . . .

Attention: **SEC. SALVADOR MEDIALDEA**
Executive Secretary
Re: Freedom of Information Request re: Status of the Health of President Rodrigo Roa Duterte and Request for Certified Copy of His Health Records

Gentlemen:

Given President Rodrigo Roa Duterte's ("President Duterte") intermittent cancellation of his public engagements, as well as the various sicknesses that he himself has mentioned in public, it is but proper that the public should be informed of the health condition of the country's chief executive and commander-in-chief.

Thus, as a concerned citizen of the Republic, I am writing to make a Freedom of Information (FOI) request pursuant to Executive Order No. 2, series of 2016. Specifically, I am requesting to request [sic] for complete information and full disclosure on the status of the health of President Duterte. I also would like to request for a certified copy of President Duterte's latest personal medical examination results, health bulletins, and other health records. This request is being made for the purpose of invoking Article VII, Section 12 of the 1987 Constitution, which requires that in times of serious illness, the public shall be informed of the state of the President's health.[108] (Emphasis in the original, citations omitted)

On March 13, 2020, the Office of the President (through the Malacañang Records Office or MRO) replied to petitioner's letter request via electronic mail, saying:

. . . .

Dear Mr. De Leon:

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[106] Petition, pp.6–7.
[107] Petition, Annex I. Dino's Request for Information Form was dated March 11, 2020. However, the attached letter request to the form was dated March 10,2020.
[108] Id.

> We refer to your Freedom of Information (FOI) request dated 11 March 2020 requesting for certified copy of medical examination results and health records of President Rodrigo Roa Duterte.
>
> *Please be informed that the requested information is not among the records available on file nor in the possession of this Office. Hence, our inability to provide the requested information.*
>
> ***We shall gladly accommodate your request once the requested information becomes available for release.***
>
> Thank you.
>
> From,
> MRO-FOI. [109] (Emphasis supplied)

Nothing in the foregoing exchanges shows that petitioner's request had been explicitly denied by the MRO. Moreover, it is unclear whether petitioner would be able to acquire the information he seeks. Petitioner asked for an update on his requested information on separate dates,[110] but to no avail. Thus, he was left with no other option but to seek judicial recourse.

Furthermore, even an appeal[111] in accordance with the Office of the President's "People's Freedom of Information Manual" would be unavailing because there is no adverse or unfavorable action[112] on the part of the MRO, which, if ever, would warrant further recourse with the FOI Appeals Authority.[113] It is evident from the MRO's reply that it did not have the information being sought for. Moreover, its statement that it would accommodate the request as soon as the information "becomes available for

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[109] Petition, Annex J. On the same date, petitioner sent a reply to the e-mail asking when will the records be available and what are the efforts being exerted to be able to have the requested information. (*See* Petition, Annex K).

[110] Petition, Annex K (March 13, 2020); Annex L (April 1, 2020) and Annex L-1 (April 6, 2020).

[111] *People's Freedom of Information Manual,* Office of the President, November, 25, 2016, sec. 11.
SECTION 11. Remedies in Case of Denial. A party whose request for access to information has been ***denied*** may avail of the remedy set forth herein.
11.1. Administrative FOI Appeal to the FOI Appeals Authority. The requesting party may file an appeal of the adverse or unfavorable action of the FDM [FOI Decision Maker] with the FOI Appeals Authority. The appeal shall be filed within fifteen (15) calendar days from the receipt of the notice of denial or fifteen (15) days from the lapse of the period to respond to the request.
11.2. The appeal shall be decided by the FOI Appeals Authority within thirty (30) working days from receipt of the appeal. Failure to decide within the thirty (30)-day period shall be deemed a denial of the appeal.
11.3. The denial of the appeal by the FOI Appeals Authority shall be considered final, and the requesting party may file the appropriate judicial action in accordance with the Rules of Court. (Emphasis supplied)

[112] *People's Freedom of Information Manual*, Office of the President, November, 25, 2016, sec. 10.
SECTION 10.10. Grounds for Denial. The FOI request may be denied based on the following grounds:
10.10.1. ***The office does not have possession or custody of the information requested:***
10.10.2. The information requested falls under the Exceptions to FOI; or
10.10.3. The request is an unreasonable subsequent identical or substantially similar request from the same requesting party whose request has already been previously granted or denied by the [Office of the President]. (Emphasis supplied)

[113] While Section 10.10 of the Manual expressly provides that an FOI request may be denied if the "office does not have possession or custody of the information requested", it must be noted that based on the MRO's reply, it is yet to give a conclusive action on the request when the information sought for becomes available.

release"[114] is vague and effectively left petitioner with no definite course of action. Hence, there is nothing to appeal.

In view of the foregoing, I cannot agree with the majority's decision to dismiss the Petition outright without a comment from respondents. Given the current crisis brought about by the pandemic, the country is faced with unprecedented times and the government is brought to a test no other administration has faced. Even the public, particularly those affected by COVID-19, may it be a person confirmed or suspected to be carrying the virus, must waive their right to privacy and disclose their medical condition to deter the spread of the virus. This also holds true for the President, as his health is critical to the people's confidence in his leadership. If anything, divulging such information would only stand to strengthen the support and trust of the people in him.

The President should maintain fealty to the people he represents. The Constitution, in my view, requires that upon demand and, even on his own, respondent should publish a regular and official medical bulletin from doctors of his own choice. Anything short of this violates the constitutional proscription against the right of the people to matters of public concern. It is suggestive of obfuscation and an intent to hide the true state of his health.

It is in times like these when the people must demand a higher standard from their public officials. It is during crises and national emergencies when this Court must be most vigilant in order to protect the rights of the public. Sadly, the majority has neglected this duty. To say the least, it is inexplicably and perilously obsequious.

Emphatically, I disagree.

ACCORDINGLY, I vote that respondents be required to **COMMENT** on the Petition and that this Court give **DUE COURSE** to the Petition to have a full exposition of the arguments from both parties.

MARVIC M.V.F. LEONEN
Associate Justice

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[114] Petition, Annex J.