REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

EN BANC

ALEXANDER A. PADILLA, RENE A.V. SAGUISAG, CHRISTIAN S. MONSOD, LORETTA ANN P. ROSALES, RENE B. GOROSPE AND SENATOR LEILA M. DE LIMA, *Petitioners*,	**G.R. NO. 231671**
-versus-	
CONGRESS OF THE PHILIPPINES, consisting of the SENATE OF THE PHILIPPINES, as represented by Senate President Aquilino Q. Pimentel III and the HOUSE OF REPRESENTATIVES, as represented by House Speaker Pantaleon D. Alvarez, *Respondent*.	
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FORMER SEN. WIGBERTO E. TAÑADA, BISHOP EMERITUS DEOGRACIAS S. INIGUEZ, BISHOP BRODERICK PABILLO, BISHOP ANTONIO R. TOBLAS, MO. ADELAIDA YGRUBAY, SHAMAH BULANGIS and CASSANDRA D. DELURIA, *Petitioners*,	**G.R. NO. 231694**
-versus-	

CONGRESS OF THE PHILIPPINES, consisting of the SENATE OF THE PHILIPPINES and the HOUSE OF REPRESENTATIVES, AQUILINO "KOKO" PIMENTEL III, President, Senate of the Philippines, and PANTALEON D. ALVAREZ, Speaker, House of Representatives,
Respondents.
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CONSOLIDATED COMMENT

Respondent Congress of the Philippines, through the Office of the Solicitor General (OSG), respectfully states:

PREFATORY STATEMENT

1. Fundamental is the principle of separation of powers in our Constitution that it is incorporated to its very structure, and that power is inherently divided among the three (3) independent branches of government, namely, the executive, legislature and the judiciary.

2. In upholding the supremacy of the equal branches, interaction is limited to the checks and balances established within the Constitution. As early as *Teodoro Abueva, et al. v. Leonard Wood, et al*.,[1] this Honorable Court has recognized the independence of each branch, to wit:

> Each department of the government should be careful not to trench upon the powers of the others; and this court should be the more so, as its decisions are to be taken as the measure, in the last legal resort, of the powers which pertain to each department thereof; and while it will uphold its own jurisdiction and powers, it will be careful not to invade or usurp any that appropriately belongs to either of the other coordinate branches of the government.

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[1] G.R. No. L-21327, 14 January 1924, *citing Miles v. Bradford*, 85 Am. Dec., 643; *State ex rel., Davisson v. Bolte*, 151 Mo., 362; *Greenwood Cemetery Land Co. v. Routt*, 17 Colo., 156; 31 Am. St. Rep., 284.

3. One of the more pioneering aspects of the 1987 Constitution is the introduction of safeguards to the President's power to proclaim martial law and suspend the privilege of the writ of *habeas corpus*. One of these measures is exercised by the legislature in two instances: *first*, when the President submits a report on the proclamation of martial law to Congress within forty-eight (48) hours after said proclamation and *second*, when Congress votes jointly to revoke the proclamation, or extend such at the President's initiative. None of the various safeguards available in the Constitution mandate Congress to convene in joint session when it has no intention to revoke or extend the proclamation or suspension, as the case may be.

4. The maxim, *verba legis non estrecedendum*, from the words of a statute there should be no departure, is basic in statutory construction. A plain reading of the relevant part of Section 18, Article VII of the 1987 Constitution shows that Congress is not required to vote jointly in cases of affirmation or concurrence with the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*.

5. In this case, Congress has expressed its intent not to revoke the President's proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* through Senate Resolution No. 49 and House Resolution No. 1050. Hence, no further action is required from Congress.

6. Petitioners seek the performance of an imputed duty that is simply non-existent. Thus, we invite this Honorable Court to consider the arguments below and to uphold Congress' autonomy in the face of Petitioners' unnecessary insistence on interfering with the discretion of Congress in handling its affairs.

STATEMENT OF FACTS AND RELEVANT PROCEEDINGS

7. On 23 May 2017, President Rodrigo Roa Duterte (President Duterte) issued Proclamation No. 216 entitled "*Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao*".[2]

[2] *See* Annex "A" of the Padilla Petition.

Through Proclamation No. 216, President Duterte declared a state of martial law in Mindanao for a period not exceeding sixty (60) days, effective as of 23 May 2017. The privilege of the writ of *habeas corpus* was likewise suspended in the same area for the duration of the state of martial law.

8. Pursuant to Section 18, Article VII of the 1987 Constitution, on 25 May 2017, or within forty-eight (48) hours after the proclamation of martial law, President Duterte transmitted to the Senate and the House of Representatives, through Senate President Aquilino Pimentel III and House Speaker Pantaleon Alvarez, respectively, the written Report relative to Proclamation No. 216 detailing the factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao.

9. On or about 25 May 2017, invitation letters were issued and sent by the Senate Secretary, Atty. Lutgardo B. Barbo, to the following officials requesting them to attend a briefing for the Senators on 29 May 2017 at 3:00 p.m. in a closed door session to describe what transpired in Mindanao: (i) Secretary of National Defense Delfin N. Lorenzana (Secretary Lorenzana); (ii) Secretary Hermogenes C. Esperon, Jr. (Secretary Esperon), National Security Adviser and Director General of the National Security Council; and (iii) General Eduardo M. Año (General Año), Chief of Staff of the Armed Forces of the Philippines (AFP).

10. On 29 May 2017, at about 3:30 p.m., a closed door briefing was conducted by Secretary Lorenzana, Secretary Esperon and other security officials for the Senators to brief them about the circumstances surrounding the declaration of martial law and to inform them about the details of the President’s Report. The briefing lasted for about four (4) hours.

11. On the same day or on 29 May 2017, the House of Representatives resolved to constitute itself as a Committee of the Whole on 31 May 2017 to consider President Duterte’s Report.

12. On 30 May 2017, two (2) Resolutions were introduced in the Senate regarding the proclamation of martial law. The first resolution was P.S. Resolution No. 388 entitled “*Expressing the Sense of the Senate, Supporting*

Proclamation No. 216 dated May 23, 2017, entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao' and Finding No Cause to Revoke the Same". The second Resolution was P.S. Resolution No. 390 entitled "*Resolution to Convene Congress in Joint Session and Deliberate on Proclamation No. 216 dated 23 May 2017 entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao*".

13. Discussions were made on the two (2) proposed Resolutions during the plenary deliberations of the Senate on 30 May 2017. During the deliberations, amendments were introduced to P.S. Resolution No. 388 and after the amendments and the debates, P.S. Resolution No. 388 was voted upon and it was adopted by a vote of seventeen (17) affirmative votes and five (5) negative votes. The amended, substituted and approved version of P.S. Resolution No. 388 was then renamed as Resolution No. 49 entitled "*Resolution Expressing the Sense of the Senate Not to Revoke, At This Time, Proclamation No. 216, series of 2017, entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao'*".[3]

14. On the other hand, as to P.S. Resolution No. 390 calling for a joint session of Congress, a vote was taken on the same and nine (9) senators were in favor while twelve (12) were against it. Thus, P.S. Resolution No. 390 was not adopted.

15. Meanwhile, on 31 May 2017, the House of Representatives acting as a Committee of the Whole was briefed for about six (6) hours by officials of the government led by Executive Secretary Salvador C. Medialdea, Secretary Lorenzana and other security officials on the factual circumstances surrounding the President's declaration of martial law and the statements contained in the President's Report. Later that day, a majority of the House of Representatives passed Resolution No. 1050 entitled "*Expressing the Full Support of the House of Representatives to President Rodrigo Duterte As It Finds No Reason to Revoke Proclamation No. 216, entitled 'Declaring A State of Martial Law and Suspending the Privilege of the Writ of Habeas*

[3] A certified true copy of Senate Resolution No. 49 is attached hereto as **Annex "1"**.

Corpus in the Whole of Mindanao'".[4] In the same deliberations, it was likewise proposed that the House of Representatives call for a joint session of Congress to deliberate and vote on the President's declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. However, after debates, the proposal was not adopted.

16. On 6 June 2017, petitioners Padilla, Saguisag, Monsod, Rosales, Gorospe and Senator de Lima filed a Petition for Mandamus dated 3 June 2017 (Padilla Petition), which seeks to compel Congress "to convene in joint session, to deliberate on Presidential Proclamation No. 216 dated 23 May 2017, and to vote thereon."[5] Petitioners of the Padilla Petition attempt to impress upon this Honorable Court that they have the alleged support of three hundred thirty-one (331) members of the legal profession. However, a look at the list attached to the Petition shows that said list only indicates the names of these "members of the legal profession" and their respective Roll Numbers. However, this alleged show of support is unverified and unattested due to the absence of signatures of the individuals named therein.

17. On 7 June 2017, petitioners Tañada, Iniguez, Pabillo, Tobias, Ygrubay, Bulangis and Deluria filed a Petition for *Certiorari* and Mandamus dated 6 June 2017 (Tañada Petition), praying that this Honorable Court "DECLARE the refusal of Congress to convene a joint session for the purpose of considering Proclamation No. 216, s. 2017, to be in grave abuse of discretion amounting to a lack or excess of jurisdiction; and ISSUE a Writ of Mandamus DIRECTING Congress to convene in joint session for the aforementioned purpose."[6]

18. On 15 June 2017, the OSG received this Honorable Court's Resolution dated 13 June 2017, consolidating the Tañada Petition with the Padilla Petition and requiring the petitioners of the Tañada Petition to comply with the following procedural requirements within five (5) days from notice:

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[4] A copy of House Resolution No. 1050 is attached hereto as **Annex "2"**.
[5] *See* PRAYER of the Padilla Petition.
[6] *See* PRAYER of the Tañada Petition, emphasis omitted.

(i) Requirement to submit verification of petitioner Iniguez pursuant to Section 1, Rule 65 in relation to Section 4, Rule 7, 1997 Rules of Civil Procedure, as amended;
(ii) Requirement to submit certification of non-forum shopping of petitioner Iniguez pursuant to Section 1, Rule 65 and Section 3, Rule 46 in relation to Section 2, Rule 56 and Section 5, Rule 7, 1997 Rules of Civil Procedure, as amended, and
(iii) Requirement to submit proof of authority to cause the preparation of the petition and to sign for and on behalf of the other petitioners.

19. The 13 June 2017 Resolution likewise required the respondents to file a comment on the Padilla and Tañada petitions within a non-extendible period of ten (10) days from notice. Thus, the Consolidated Comment is due for filing on 25 June 2017. Considering that 25 June 2017 is a Sunday and 26 June 2017 is a non-working holiday, this Consolidated Comment is being filed on the next working day, or on 27 June 2017.

ARGUMENTS

I.

PETITIONERS FAILED TO SATISFY THE REQUISITES FOR JUDICIAL REVIEW.

II.

PETITIONERS FAILED TO COMPLY WITH THE REQUISITES FOR MANDAMUS TO LIE.

III.

CERTIORARI IS UNAVAILING BECAUSE CONGRESS DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN NOT CONVENING IN A JOINT SESSION TO REVIEW THE PROCLAMATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.

IV.

WITH ALL DUE RESPECT, THIS HONORABLE COURT IS WITHOUT JURISDICTION TO COMPEL CONGRESS TO CONVENE IN JOINT SESSION BY VIRTUE OF THE PRINCIPLE OF SEPARATION OF POWERS.

V.

THERE IS NO DUTY ON THE PART OF CONGRESS TO VOTE JOINTLY EXCEPT IN CASES OF REVOCATION OR EXTENSION OF THE PROCLAMATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.

VI.

EVEN WITHOUT THE CONSTITUTIONAL DUTY TO VOTE JOINTLY EXCEPT IN CASE OF REVOCATION OR EXTENSION OF THE PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*, BOTH HOUSES NEVERTHELESS EXPRESSED SUPPORT ON THE PROCLAMATION THROUGH A VOTE OF THE MAJORITY OF ITS MEMBERS AS EVIDENCED BY SENATE RESOLUTION NO. 49 AND HOUSE RESOLUTION NO. 1050.

VII.

MATTERS AFFECTING NATIONAL SECURITY ARE CONSIDERED AS EXCEPTIONS TO THE RIGHT TO INFORMATION AND HENCE, NEED NOT BE DISCLOSED TO THE PUBLIC.

DISCUSSION

I.

PETITIONERS FAILED TO SATISFY THE REQUISITES FOR JUDICIAL REVIEW.

20. The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case.[7]

21. It is respectfully submitted that there is no basis for the Honorable Court's exercise of its power of judicial review because in this case, there is no actual case or controversy and the petitioners do not have *locus standi.* The absence of the first two requisites, which are the most essential, renders the discussion of the last two superfluous.[8]

There is no actual case or controversy.

22. The issues presented by petitioners are far from justiciable. The second paragraph of Section 1, Article VIII of the Constitution states that power of judicial review is proper only when there is an actual case or controversy:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
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> Judicial power includes the duty of the courts of justice to settle **actual controversies** involving rights which are legally demandable and enforceable, and to determine

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[7] *Belgica v. Executive Secretary*, G.R. No. 208566, November 19, 2013 *citing Joya v. Presidential Commission on Good Government*, G.R. No. 96541, August 24, 1993 and *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010.

[8] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010.

> whether or not there has been a grave abuse of discretion amounting to lack or excess jurisdiction on the part of any branch or instrumentality of the Government.[9]

23. Justiciability requires (i) that there be an actual controversy between or among the parties to the dispute; (ii) that the interests of the parties be adverse; (iii) that the matter in controversy be capable of being adjudicated by judicial power; and (iv) that the determination of the controversy will result in practical relief to the complainant.[10]

24. Applying the above considerations, petitioners' cases do not present a justiciable controversy. The present petitions failed to comply with the requirements that the matter in controversy is capable of being adjudicated by the Honorable Court and that the determination of such issue will result in practical relief in favor of petitioners. As will be exhaustively discussed below, the Honorable Court cannot grant the relief prayed for by the petitioners.

25. Under Section 18, Article VII of the Constitution, there is no duty on the part of Congress to vote jointly except in cases of revocation or extension of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus.*[11] Since no mandatory duty is imposed on Congress, the non-convening of Congress in a joint session does not pose any actual case or controversy worthy of the imposition of the doctrine of judicial review.

Petitioners have no standing to file the present case.

26. Standing is the determination of whether a specific person is the proper party to bring a matter to the court for adjudication. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[12]

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[9] Emphasis supplied.
[10] *See* Separate Opinion of Justice Nachura in *De Castro v. Macapagal-Arroyo*, G.R. No. 191002, March 17, 2010 *citing Astoria Federal Mortgage Corporation v. Matschke*, 111 Conn. App. 462, 959 A.2d 652 (2008).
[11] *See* Section 18, Article VII of the 1987 Constitution.
[12] *Almario v. Executive Secretary*, G. R. No. 189028, July 16, 2013.

27. A party can raise a constitutional question based on the existence of the following conditions: (i) the party personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (ii) the injury is fairly traceable to the challenged action; and (iii) the injury is likely to be redressed by the remedy sought.[13]

28. Petitioners Alexander A. Padilla,[14] Rene A.V. Saguisag,[15] Christian S. Monsod,[16] Loretta Ann P. Rosales,[17] Rene B. Gorospe,[18] Wigberto Tañada,[19] Bishop Deogracias Iniguez,[20] Bishop Borderick Pabillo,[21] Bishop Antonio R. Tobias,[22] Mo. Adelaida Ygrubay,[23] Shamah Bulangis[24] and Cassandra D. Deluria[25] have come before the Honorable Court in their respective capacities as taxpayers and citizens. They claim that as citizens, they have the right to seek enforcement of the constitutionally mandated "legislative review" on a president's declaration of martial law.[26] Asserting their standing as taxpayers, petitioners contend that the continued implementation of martial law in Mindanao constitutes an illegal disbursement of public funds. These, however, are inadequate to clothe them with *locus standi.*

29. Citizen standing must rest on direct and personal interest in the proceeding.[27] In the case at bar, petitioners have not asserted any direct and personal interest in Congress' failure to convene in joint session to deliberate Presidential Proclamation No. 216. Generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi.* Evidence of a direct and personal interest is key.[28]

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[13] *Lozano v. Nograles*, G.R. Nos. 187883 & 187910, June 16, 2009.
[14] G.R. No. 231671, p. 2.
[15] *Ibid.*, p. 3
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] G.R. No. 231694, pp. 4, 12-14.
[20] *Ibid.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] G.R. No. 231694, pp. 5, 12-14.
[26] G.R. No. 231671, p. 7.
[27] *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. COMELEC*, G.R. No. 132922, April 21, 1998.
[28] *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010.

30. It bears stressing that the right granted to any citizen under Section 18, Article VII of the Constitution pertains to the right of said citizen to question the sufficiency of the factual basis of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* in an appropriate proceeding filed before this Honorable Court. It does not pertain to the right of a citizen, absent any proof of direct injury or interest, to implore this Honorable Court to compel Congress to convene in a joint session and deliberate upon the President's declaration of martial law or suspension of the privilege of the writ of *habeas corpus.*

31. On the other hand, a taxpayer suit is proper only when there is an exercise of the spending or taxing power of Congress.[29] In *Biraogo v. The Philippine Truth Commission of 2010*,[30] the OSG, in arguing against the legal standing of Biraogo, argued that "as a taxpayer, he has no standing to question the creation of the PTC [Philippine Truth Commission] and the budget for its operations." The OSG emphasized that the funds to be used for the creation and operation of the commission are to be taken from those funds already appropriated by Congress. Thus, the allocation and disbursement of funds for the commission will not entail congressional action but will simply be an exercise of the President's power over contingent funds. The Honorable Court held that the OSG was correct and held that:

> As correctly pointed out by the OSG, Biraogo has not shown that he sustained, or is in danger of sustaining, any personal and direct injury attributable to the implementation of Executive Order No. 1. Nowhere in his petition is an assertion of a clear right that may justify his clamor for the Court to exercise judicial power and to wield the axe over presidential issuances in defense of the Constitution. xxx

32. Similar to the case discussed above, the funds used in the implementation of martial law in Mindanao are taken from those funds already appropriated by Congress. Hence, petitioners have no legal standing to file the instant Petitions as taxpayers.

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[29] *Gonzales v. Narvasa*, G.R. No. 140835, August 14, 2000.
[30] G.R. Nos. 192935 & 193036, December 7, 2010.

33. Petitioner Leila M. De Lima, as member of the Senate,[31] also has no legal standing to file the instant petition. As will be comprehensively discussed below, the convening of a joint session is merely directory and not mandatory. Thus, insofar as the powers of Congress are not impaired, so is there no prejudice to each member thereof. Even assuming *arguendo* that the authority of Congress is indeed compromised, still Senator De Lima does not have standing to file the present case because it has not been shown that Senator De Lima was allowed to participate in Senate sessions during her incarceration. Therefore, she will not suffer any direct injury in the non-convening of Congress in joint session.

34. Petitioners cannot also invoke *locus standi* based on transcendental importance. The following are the factors in determining whether a matter is of transcendental importance: (i) the character of the funds or other assets involved in the case; (ii) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and, (iii) the lack of any other party with a more direct and specific interest in the questions being raised.[32] In this case, petitioners were not able to establish the foregoing factors. Petitioners have not identified their personal stake in the outcome of the controversy. They fail to particularize how the Congress' alleged non-compliance with a purported constitutional requirement would result in their direct injury. Again, the clear text of Section 18, Article VII of the 1987 Constitution does not impose any duty on the Congress to convene in a joint session for the purpose of considering the presidential proclamation declaring martial law.

II.

PETITIONERS FAILED TO COMPLY WITH THE REQUISITES FOR MANDAMUS TO LIE.

35. The petitioners assert that Congress has a ministerial duty to convene in joint session upon the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. They contend that the

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[31] G.R. No. 231671, p. 3.
[32] *CREBA v. ERC and MERALCO*, G.R. No. 174697, July 8, 2010.

mere proclamation of martial law or suspension of the privilege of writ of *habeas corpus* is enough to trigger Congress' obligation to convene in joint session to review the President's power as Commander-in-Chief.

36. With all due respect, the exceptional remedy of mandamus is unavailable in the present case. Petitioners assume that it is the ministerial duty of Congress to convene and vote jointly when martial law is proclaimed or the privilege of the writ of *habeas corpus* is suspended. This is wrong.

37. Mandamus will only issue when the act compelled is a ministerial act. Section 3, Rule 65 of the Rules of Court specifically provides:

> **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, 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.

38. Mandamus is a remedy in cases where 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. In order for the remedy of mandamus to lie, the duty must not only be ministerial but must also be a duty enjoined by law, a duty which the tribunal or person unlawfully neglects to perform.[33]

39. In the absence of any specific constitutional provision or law requiring Congress to jointly convene upon

[33] 1997 RULES OF CIVIL PROCEDURE, Rule 65, § 3.

the declaration of martial law, the remedy of mandamus – which requires the presence of a duty enjoined by law – is clearly unavailable.

Congress does not have a ministerial duty to vote jointly in the event that there will be no revocation or extension of the proclamation of martial law or suspension of the privilege of the writ of habeas corpus.

40. The Padilla Petition asserts that the duty of Congress to convene in joint session upon the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* does not require the exercise of discretion. It alleges that the mere proclamation or suspension of the privilege of the writ of *habeas corpus* is enough to trigger the obligation of Congress to convene in joint session for the purpose of exercising legislative review of the martial law powers of the President.

41. On the other hand, the Tañada Petition contends that the writ of *mandamus* is a proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, especially when the public right involved is mandated by the Constitution.

42. At the outset, these Petitions are premised on the erroneous assumption that Congress has a ministerial duty to convene and vote jointly upon the President's proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*.

43. As will be discussed more exhaustively below, a plain reading of the Constitution will readily illustrate that it does not impose a duty upon Congress to convene in joint session to determine the validity of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. It is only in cases of revocation or extension of the proclamation or suspension that Congress is required to vote jointly.

44. Thus, the present petitions to compel the Congress to convene jointly are utterly baseless and unwarranted. As provided for in Rule 65 of the Rules of Court, *mandamus* will only issue when the act to be compelled is a ministerial act.

45. *Mandamus* lies to compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent to perform the act required that the law specifically enjoins as a duty resulting from office, trust or station.[34] A clear legal right is one that is founded or granted by law. Unless the right to relief is clear, *mandamus* will not issue. If there is any discretion as to the taking or non-taking of the action sought, there is no clear legal duty.[35]

46. Petitioners have no clear legal right in this case because their alleged constitutional right to information as enshrined in Section 7, Article III of the 1987 Constitution[36] is not absolute but subject to limitations imposed by law.

47. Petitioners are highly mistaken to state that the convening of Congress in joint session to deliberate on Proclamation No. 216 is a clear legal duty or ministerial duty on the part of the Congress.

48. What is apparent is that the Constitution is silent as to the duty of Congress to perform any act upon the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Thus, the act of Congress to vote jointly is not mandatory when the action taken is to affirm or express support to the proclamation or suspension.

49. Verily, there is no need to vote jointly to approve or affirm something which is already in full force or effect. Joint voting is only mandatory when the action is revocation or extension. Thus, the matter of affirming, ratifying or not revoking the declaration of martial law and even the manner by which it is done is left and fully within the power, authority

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[34] *Gatmaytan v. Court of Appeals*, G.R. No. 132856, August 28, 2006, *citing Pacheco v. Court of Appeals*, G.R. No. 124863, June 19, 2000.
[35] *Pacheco v. Court of Appeals*, G.R. No. 124863, June 19, 2000, *citing Palileo v. Ruiz Castro*, 85 Phil. 272 (1950).
[36] Section 7, Article III of the 1987 Constitution states: "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."

and discretion of Congress over which the Supreme Court has no power.

50. In *Alejandrino vs. Quezon*,[37] this Honorable Court ruled that the writ of mandamus is unavailable against the Congress with respect to performance of its functions which are purely discretionary in character, thus:

> ... we are not at all surprised to find the general rule of *mandamus* to be, that the writ will not lie from one branch of the government to a coordinate branch, for the very obvious reason that neither is inferior to the other. ***Mandamus* will not lie against the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative, functions and over which they have exclusive control.** The courts cannot dictate action in this respect without a gross usurpation of power.[38]

51. Hence, without any constitutional mandate to convene, it was only logical for Congress to act in accordance with its own discretion and rules, in the issuance of their respective Resolutions expressing their support to President Duterte's proclamation of martial law. Thus, the writ of *mandamus* is improper.

There was no neglect of performance of a duty enjoined by law by Congress. In fact, there was no duty on its part to convene and express support on the proclamation of martial law.

52. The Padilla Petition argues that Congress has unlawfully neglected their constitutional duty to convene. As such, m*andamus* lies because the duty of Congress to convene and vote jointly following the President's proclamation of martial law is automatic. Petitioners are mistaken.

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[37] G.R. No. 22041, September 11, 1924.
[38] Emphasis and underscoring supplied.

53. It is a fundamental principle governing the issuance of *mandamus* that the duties to be enforced by such *mandamus* must be such as clearly and peremptorily enjoined by law or by reason of official station.[39] The writ of mandamus will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same.[40] In other words, *mandamus* will lie if the respondent unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station.[41]

54. In this case, there exists no duty for Congress to convene, voting jointly, and express support on the proclamation of martial law.

55. Section 18, Article VII, par. 1 of the 1987 Constitution grants the President, as Commander-in-Chief, the power to declare martial law. There is a clear textual commitment under the Constitution to bestow the full authority to proclaim martial law upon the President and no one else, and without need for the prior approval of any other public official.

56. Further, a cursory reading of Section 18, Article VII of the 1987 Constitution expresses *only* two powers which the Congress may exercise upon the proclamation of martial law – *first,* the power to revoke and *second,* the power to extend, the proclamation. The provision is clear that the Congress "may" exercise the two (2) powers mentioned in the preceding statement. Considering that *mandamus* will lie only if respondent unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust, station, the discretionary powers on the part of the Congress clearly negates the *mandamus* filed before this Honorable Court.

57. It must be pointed out that the same article, specifically provides for the power of review by this Honorable Court, and not that of Congress:

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[39] *Sanson v. Barrios, et al.*, G.R. No. L-45086, July 20, 1936, *citing Tabigue v. Duvall*, G.R. No. L-6185, August 2, 1910, *Gonzales v. The Board of Pharmacy, et al.*, G.R. No. 7262, October 21, 1911, *Montalbo v. Santamaria*, G.R. No. L-34136, October 2, 1930.
[40] *Special People, Inc. Foundation v. Canda*, G.R. No. 160932, January 14, 2013.
[41] *Uy Kiao Eng v. Nixon Lee*, G.R. No. 176831, January 15, 2010.

> The Supreme Court may **review**, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

58. The Constitution is clear and express that the Supreme Court may review the sufficiency of the factual basis of the proclamation, either it be favorable or not to the proclamation. Had the Constitution intended to give the Congress the same power to review and/or affirm the validity and/or propriety of the proclamation of martial law, it should have been expressly provided for in the Constitution.

59. To recapitulate, by constitutional design, the Congress has no duty to concur with the imposition of martial law. Prior concurrence of the Congress is not required for the effectivity of the proclamation of martial law. Further, in the absence of the duty to concur, the requirement for Congress to convene, voting jointly, only finds reason if it is for the purpose of revoking or extending the proclamation of martial law because there is no need to approve something that is deemed effective by the Constitution upon its proclamation. A thorough discussion of the constitutional provision will be made in the succeeding arguments.

III.

***CERTIORARI* IS UNAVAILING BECAUSE CONGRESS DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN NOT CONVENING IN A JOINT SESSION TO REVIEW THE PROCLAMATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.**

60. The nature of the Tañada Petition is a "Petition for *Certiorari* and Mandamus under Rule 65 of the Rules of Court, on a pure question of law, namely whether or not Section 18, Article VII of the 1987 Constitution requires the Senate and House of Representatives to automatically convene a joint session of Congress immediately after any declaration of

martial law or suspension of the Privilege of the writ of *Habeas Corpus*."[42]

61. Just as the Petitions failed to comply with the requisites of mandamus, it likewise failed to comply with the requisites of a petition for certiorari.

62. A petition for *certiorari* is governed by Rule 65 of the Rules of Court:

> Section 1. Petition for certiorari.-When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

63. In *Feliciano B. Duyon v. The Former Fourth Division of the Court of Appeals, et. al.*,[43] this Honorable Court laid down the requisites of a petition for certiorari, to *wit*:

> **For certiorari to prosper, the following requisites must concur:** (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law. (Emphasis supplied)

64. In this case, even assuming that there is an actual case or controversy, a petition for certiorari under Rule 65 is an improper remedy because there is no concurrence of the requisites required by law.

65. *Certiorari* is unavailing in this case because respondent Congress did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in

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[42] *See* Tañada Petition, p. 3, par. 1.
[43] G.R. No. 172218, November 26, 2014.

expressing support on the proclamation of martial law through Senate Resolution No. 49 and House Resolution No. 1050.

66. In *Unilever Philippines v. Michael Tan,*[44] this Honorable Court defined grave abuse of discretion as "such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."

67. As will be fully discussed in the succeeding arguments, respondent Congress did not commit grave abuse of discretion because it has the duty to vote jointly only in two (2) instances: (a) to revoke the President's proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*; and (b) upon initiative of the President, to extend such proclamation or suspension for a period to be determined by Congress.

68. In the present case, respondent Congress, after receiving the President's Report and a security briefing from officials of the executive branch, separately passed Senate P.S. Resolution No. 49 and House Resolution No. 1050, expressing their full support for the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao.

69. The separate Resolutions are not without significance. This expression of support precludes the duty to vote jointly as such action is required only if Congress has the intention of revoking or extending the proclamation. Suffice it to state therefore that there can be no evasion of a positive duty or a virtual refusal to perform a duty if there is no duty to begin with.

[44] G.R. No. 179365, January 29, 2014.

IV.

WITH ALL DUE RESPECT, THIS HONORABLE COURT IS WITHOUT JURISDICTION TO COMPEL CONGRESS TO CONVENE IN JOINT SESSION BY VIRTUE OF THE PRINCIPLE OF SEPARATION OF POWERS.

70. With all due respect, this Honorable Court is without jurisdiction to compel Congress to convene in order to deliberate and vote jointly on the declaration of martial law by virtue of the principle of separation of powers.

71. The principle of separation of powers refers to the constitutional demarcation of the three fundamental powers of government.[45] In the words of Justice Laurel in the celebrated case of *Angara v. Electoral Commission,*[46] it means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government."

72. The primary reason for this principle is to ensure that no branch of government shall be controlled or subjected to the influence of another. "One branch should be left completely independent of the others, independent not in the sense that the three shall not cooperate in the common end of carrying into effect the purposes of the constitution, but in the sense that the acts of each shall never be controlled by or subjected to the influence of either of the branches."[47]

73. It is clear that under the separation of powers, "courts may not intervene in the internal affairs of the legislature; it is not within the province of courts to direct Congress how to do its work."[48] "Constitutional respect and regard for the sovereign acts of a co-equal branch prevent this Honorable Court from prying into the internal workings of the Congress."[49]

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[45] *Belgica v. Ochoa*, G.R. Nos. 208566, 208493 & 209251, November 19, 2013.
[46] G.R. No. L-45081, July 15, 1936.
[47] *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, G.R. Nos. 183591, 183752, 183893, 183951 & 183962, October 14, 2008.
[48] *Sen. Miriam Defensor Santiago and Sen. Francisco Tatad v. Sen Teofisto Guingona Jr. and Sen Marcelo Fernan*, G.R. No. 134577, November 18, 1998.
[49] *Sen. Miriam Defensor Santiago and Sen. Francisco Tatad v. Sen Teofisto Guingona Jr. and Sen Marcelo Fernan*, G.R. No. 134577, November 18, 1998.

74. In *Association of Small Landowners in the Philippines, Inc. v. Honorable Secretary of Agrarian Reform*,[50] this Honorable Court emphasized the exercise of restraint by the courts in view of the doctrine of separation of powers:

> Although holding neither purse nor sword and so regarded as the weakest of the three departments of the government, the judiciary is nonetheless vested with the power to annul the acts of either the legislative or the executive or of both when not conformable to the fundamental law. This is the reason for what some quarters call the doctrine of judicial supremacy. Even so, this power is not lightly assumed or readily exercised. **The doctrine of separation of powers imposes upon the courts a proper restraint, born of the nature of their functions and of their respect for the other departments, in striking down the acts of the legislative and the executive as unconstitutional. The policy, indeed, is a blend of courtesy and caution. To doubt is to sustain. The theory is that before the act was done or the law was enacted, earnest studies were made by Congress or the President, or both, to insure that the Constitution would not be breached.**[51]

75. In *Alejandrino v. Quezon, et al.*,[52] this Honorable Court *En Banc* held that "[n]o court has ever held and we apprehend no court will ever hold that it possesses the power to direct the Chief Executive or the Legislature or a branch thereof to take any particular action. If a court should ever be so rash as to thus trench on the domain of either of the other departments, it will be the end of popular government as we know it in democracies."

76. Therefore, in the event that this Honorable Court takes cognizance of the instant petitions and eventually directs the Congress to convene jointly, such is a clear violation of the principle of separation of powers.

V.

THERE IS NO DUTY ON THE PART OF CONGRESS TO VOTE JOINTLY EXCEPT IN CASES OF REVOCATION OR EXTENSION OF THE PROCLAMATION OF MARTIAL LAW AND

[50] G.R. Nos. 78742, 79310, 79744 & 79777, July 14, 1989.
[51] Emphasis and underscoring supplied.
[52] G.R. No. 22041, September 11, 1924.

SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.

***The text of the 1987 Constitution does not require Congress to vote jointly for the affirmation or concurrence on the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus*.**

77. Petitioners postulate that a textual reading of Section 18, Article VII of the Constitution means that Congress has the mandatory obligation: (i) to convene in joint session; AND (ii) to vote in either supporting or revoking the President's declaration of martial law and the suspension of the privilege of writ of *habeas corpus*.[53] They posit that under the plain reading of Section 18, Article VII of the Constitution, the only plausible and reasonable interpretation is that a joint session is mandatory whether or not Congress is in session.[54] Petitioners' theory deserves scant consideration by this Honorable Court.

78. Despite asserting that their conclusions are based on a plain reading of the text, Petitioners failed to apply the *verba legis* approach to constitutional construction. Instead, they added another layer of interpretation that is not only self-serving, but also devoid of reason.

79. In determining the meaning of constitutional provisions, this Honorable Court has consistently held that when the provision is clear and unambiguous, it must be given its literal meaning.[55] The principle of *verba legis non est recedendum,* or "from the words of a statute there should be no departure", instructs that there is no need to further interpret the Constitutional provision beyond its usual meaning and common usage, to wit:

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[53] Padilla Petition, p. 12.
[54] Tañada Petition, p. 17.
[55] *Republic vs. Lacap*, G.R. No. 15823, March 2, 2007, *citing Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005, 456 SCRA 414, 443; *National Federation of Labor vs. National Labor Relations Commission*, 383 Phil. 910, 918 (2000); Ruben E. Agpalo, *Statutory Construction*, 2003 ed., p. 124.

> The rule is that if a statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is known as the plain meaning rule enunciated by the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.
>
> The primary source whence to ascertain constitutional intent or purpose is the language of the provision itself. **If possible, the words in the Constitution must be given their ordinary meaning, save where technical terms are employed**.[56]

80. The foregoing doctrine was reiterated in *Chavez v. Judicial and Bar Council*,[57] and this Honorable Court further elucidated the *verba legis* approach and provided guidelines, *viz*:

> One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. **It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. As much as possible, the words of the Constitution 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. *Verba legis non est recedendum* – from the words of a statute there should be no departure.
>
> The *raison d' être* for the rule is essentially two-fold: *First,* because **it is assumed that the words in which constitutional provisions are couched express the objective sought to be attained; and *second*, because the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should ever be present as an important condition for the rule of law to prevail.**
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> Moreover, **under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is**

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[56] *Funa v. Villar*, G.R. No. 192791, April 24, 2012; emphasis and underscoring supplied.
[57] G.R. No. 202242, July 17, 2012.

> **<u>founded or with which it is associated.</u>** This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[58]

81. From the foregoing jurisprudence, the following rules on the *verba legis* approach may be extracted: (i) If the provision is clear and unambiguous, **the literal meaning shall prevail**, unless technical terms are used; (ii) The words of the Constitution should be understood **in the sense they have in common usage** and from the perspective of a layman; and (iii) If a particular word or phrase is ambiguous in itself or subject to multiple meanings, **its construction should consider the company of words in which it is founded or with which it is associated.**

82. Applying said rules, the plain text of Section 18, Article VII of the Constitution readily reveals that Congress, when in session, is required **to vote jointly** in only two (2) instances: (a) **to revoke** the President's proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*; and (b) upon the initiative of the President, **to extend** such proclamation or suspension for a period to be determined by Congress. The pertinent part of the provision states:

> The Congress, **voting jointly**… **may revoke** such proclamation or suspension…. Upon the initiative of the President, the Congress **may, in the same manner, extend** such proclamation or suspension for a period to be determined by Congress.[59]

83. A cursory look at the subject provision already shows that it does not require a joint session by the two

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[58] Emphasis and underscoring supplied.
[59] Emphasis supplied.

houses of Congress. Nowhere does it state in Section 18 of Article VII of the Constitution that a joint session is an automatic and mandatory duty. In fact, the words "joint session" did not appear at all. The Constitution only provides for the conduct of "voting jointly" and only for the purpose of revoking or extending the proclamation or suspension.

84. To further elucidate, Section 18, Article VII of the Constitution only provides for joint voting, which does not necessarily mean joint voting in a joint session of Congress, and only for the two (2) particular options provided therein. If the Constitution indeed requires the conduct of such joint session, it would have expressly stated the same in Section 18, Article VII, as in the case for two (2) other provisions in the Constitution:

> 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.[60]
>
> The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates **in the presence of the Senate and the House of Representatives in joint public session**, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.[61]

85. In assuming that the joint voting of Congress necessarily requires the convening of a joint session, petitioners already went over and beyond the plain and textual meaning of the Constitutional provision. The joint votes of the two (2) houses of Congress may be ascertained even if both Houses are not in joint session.

86. In addition to the misreading of "voting jointly", petitioners also assert the mandatory nature of the alleged joint session. It should be emphasized, however, that the use of the modal auxiliary verb "may" in this provision contradicts this very theory. "May" is commonly used by laymen as

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[60] Article VI, Section 23 of the 1987 Constitution.
[61] Article VII, Section 4 of the 1987 Constitution.

permissive and operates to confer discretion on the part of the subject. This is in contrast to the auxiliary verb "shall", which is imperative and imposes a duty that can be enforced against the subject.[62] In the context of Section 18, Article VII, of the Constitution, the Congress has the ultimate discretion to revoke or extend the proclamation and suspension. It is only by virtue of these two acts that Congress may be required by Section 18, Article VII, to vote jointly.

87. Petitioners also erred in insisting that the affirmation of the proclamation or suspension must undergo majority vote of Congress in joint session. Their interpretation is contrary to the principle of *expressio unius est exclusio alterius*, or "when one or more things of a class are expressly mentioned, others of the same class are excluded."[63] Since the Constitution exclusively provides for revocation and extension in the conduct of joint voting, it must necessarily follow that no further or other acts can be subject to a similar requirement by Congress. Corollary, Congress is not required to jointly vote, much less to convene in joint session, in cases of affirmation of the proclamation and suspension.

88. While the aforesaid discussion pertains to the first paragraph of Section 18 of Article VII on when Congress is in session, the same conclusion therein holds true if Congress is not in session. Note that the second paragraph of Section 18, Article VII of the Constitution only requires Congress, if not in session, to convene. It does not command Congress to automatically conduct a joint session after so convening. Therefore, the qualifications in the first paragraph of the said constitutional provision relating to the conduct of a joint session will also apply after Congress has convened.

89. The obligation imposed on Congress to convene, *if not in session*, within **twenty-four hours** following the proclamation of martial law or the suspension of the writ, should be related to that portion of the first paragraph requiring the President to submit a report in person or in writing to the Congress "(w)ithin **forty-eight hours** from the proclamation of martial law or the suspension of the privilege of the writ of *habeas cor*pus."[64]

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[62] *Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; *Jaramilla v. Comelec*, 460 Phil. 507, 514 (2003)
[63] *Romualdez v. Marcelo*, G.R. Nos. 165510-33, July 28, 2006.
[64] 1987 Constitution, Art. VII, Sec. 18, par. 1; emphasis supplied.

90. If Congress is not in session within twenty-four (24) hours following the proclamation or suspension, the President cannot fulfill his duty to submit his report to Congress within forty-eight (48) hours from such proclamation or suspension. In other words, the President's report cannot be officially submitted to Congress as the latter is not in session.

91. Based on the above considerations, while Congress may express its support on the President's declaration of martial law or suspension of the privilege of the writ of *habeas corpus* (albeit not mandatory), such expression of support need not be made in a joint session, nor a joint resolution. The reason for this is that the concurrence of Congress, whether in joint or separate sessions, is not constitutionally required for the validity of the President's proclamation of martial law or suspension of the writ. Stated differently, the validity of such proclamation or suspension does not depend upon the concurrence or agreement of Congress.

Even the constitutional deliberations reveal the intent of the framers to require Congress to vote jointly only in case of revocation of the proclamation of martial law or suspension of the privilege of the writ of habeas corpus.

92. The power of the President to place the Philippines, or any part thereof under martial law, and to suspend the privilege of the writ of *habeas corpus*, for a period not exceeding sixty (60) days, in case of invasion or rebellion when public safety requires it, is plenary and absolute – and in no case subject to the concurrence of the legislative nor judicial branches of government. As explicitly stated in the constitutional deliberations:

> MR. PADILLA. xxx
>
> **We all agree that the suspension of the writ or the proclamation of martial law should not require beforehand the concurrence of the majority of all the Members of the Congress.** However, as provided by the

> Committee, the **Congress may revoke, amend, shorten, or even increase the period of such suspension**. xxx[65]

93. Petitioners suggest that "the mere proclamation or suspension of the privilege of the writ of *habeas corpus* is enough to trigger the obligation of Congress to convene in joint session for the purpose of exercising legislative review of the martial law powers of the President,[66] and that the failure, nay, refusal to convene is a virtual abdication of its constitutionally mandated duty which deliberate inaction amounts to grave abuse of discretion.[67]

94. Unfortunately, as discussed above, there is absolutely nothing in the provision of the Constitution that mandates Congress to convene in a joint session when their intention is merely to discuss and debate on the factual and legal basis for the declaration of martial law or to support or concur with said declaration. In this instance, although there was no necessity on the part of the Congress to convene considering that their intention was to make known their support for the declaration of martial law, the two Houses of Congress nevertheless issued their respective resolutions expressing their concurrence to the President's declaration of martial law and suspension of the privilege of the writ of *habeas corpus* if only to assure the people and allay their fears and apprehension that the proclamation was not a repetition of the martial law declared during the time of Marcos.

95. Dissatisfied with these actions, petitioners maintain that the joint session should have been held immediately after the declaration, regardless of whether Congress was in session or not and that the effort of both Houses to come up with separate resolutions supporting the proclamation is what they derisively suggest is an "institutional shortcut"[68] which cannot substantially substitute for the duty to convene, deliberate and vote as one body. We respectfully beg to disagree.

96. Verily, had the Constitutional Commission members really intended the Congress to conduct a joint legislative review of the proclamation and suspension, the Constitutional provisions would have explicitly stated so,

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[65]Records of the Constitutional Commission, Volume 2, p. 469.
[66]*See* Padilla Petition, p. 19.
[67]*See* Tañada Petition, p. 8.
[68]*See* Padilla Petition, p. 18.

clearly and unequivocally as it did for the judiciary when it provided that "the Supreme Court may review xxx, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ." Thus, as it now stands, there is no directive in the Constitution requiring the two Houses of Congress to conduct a joint legislative review in cases where it would neither revoke nor extend the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus.*

97. In fact, a reading of the constitutional deliberations on the requirement of joint voting by Congress shows that said requirement to vote jointly is only required when Congress intends to revoke the proclamation or suspension. The deliberations of the constitutional commission state:

> FR. BERNAS. We would like a little discussion on that because yesterday we already removed the necessity for concurrence of Congress for the initial imposition of martial law. If we require the Senate and the House of Representatives to vote separately **for purposes of revoking the imposition of martial law, that will make it very difficult for Congress to revoke the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*.** That is just thinking aloud. To balance the fact that the President acts unilaterally, then the Congress voting as one body and not separately can revoke the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.
>
> MR. MONSOD. In other words, voting jointly.
>
> FR. BERNAS. Jointly, yes.[69]
>
> FR. BERNAS. I quite realize that that is the practice and, precisely, in proposing this, I am consciously proposing this as an exception to this practice because of the tremendous effect on the nation when the privilege of the writ of *habeas corpus* is suspended and then martial law is imposed. Since we have allowed the President to impose martial law and suspend the privilege of the writ of *habeas corpus* unilaterally, **we should make it a little more easy for Congress to reverse such actions for the sake of protecting the rights of the people**.[70]

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[69] Records of the Constitutional Commission, p. 493
[70] *Ibid.*

98. From the foregoing discussion, it is clear from the intent of the framers of the Constitution that the requirement of "voting jointly" is only applicable in case Congress intends to revoke or reverse the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*.

99. To be sure, arguing that there is a need for both Houses of Congress to convene jointly for purposes of "approving," "ratifying" or "concurring with" the proclamation or suspension would simply introduce a requirement that was precisely and deliberately removed by the framers of our Constitution.

Fortun v. GMA is inapplicable and cannot be used as basis for the alleged duty of Congress to automatically convene in joint session upon the President's proclamation of martial law.

100. Petitioners claim that the Honorable Court's ruling in *Fortun v. GMA*[71] (*Fortun*) adds weight to the plain text and apparent intent of the Constitution that Congress automatically convene jointly upon the President's proclamation of martial law. Petitioners allege that legislative precedent shows that in 2009, Congress convened in joint session to review the validity of then President Gloria Macapagal-Arroyo's proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*.

101. However, a reading of *Fortun* will show that the factual circumstances therein are different from this case, hence, inapplicable.

102. *First*, the main issue in *Fortun* is the Honorable Court's power of review on the sufficiency of the factual basis of the president's declaration of martial law and not the alleged duty of Congress to convene pursuant to Section 18, Article VII of the Constitution. In addition, the Honorable Court ruled in *Fortun* that the petitions therein have become moot and academic and the Court has nothing to review due

[71] G.R. Nos. 190293, 190294, 190301, 190302, 190307, 190356 & 190380, March 20, 2012.

to the lifting of martial law by the President eight (8) days after her proclamation of the same and before the proclamation and suspension of the privilege of the writ of *habeas corpus* could be fully implemented. Thus, the issue of whether or not Congress should convene in joint session in cases where it is not revoking the president's proclamation of martial law was never taken up as an issue in the case and any pronouncement by the Honorable Court as to the alleged duty of the legislature to convene upon the declaration of martial law is merely *obiter dictum*. "An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent."[72]

103. *Second*, the factual circumstances in 2009 are entirely different from the present case. In 2009, the Senate adopted Resolution No. 217 entitled "*Resolution Expressing the Sense of the Senate that the Proclamation of Martial Law in the Province of Maguindanao is Contrary to the Provisions of the 1987 Constitution*".[73] Thus, it is apparent that as far as the Senate was concerned at that time, it was intending to revoke the declaration. Further, in 2009, both the Senate and House of Representatives actually agreed and passed a Concurrent Resolution calling for the convening of a joint session of Congress.

104. However, in this case, the Resolutions calling for a joint session were actually not passed by both Houses. Considering that the factual circumstances in 2009 are totally different from the present case, *Fortun* cannot be considered as precedence for the alleged automatic convening of a joint session by Congress upon the president's proclamation of martial law.

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[72] *Villanueva v. Court of Appeals*, G.R. No. 142947, March 19, 2002.
[73] A certified true copy of Senate Resolution No. 217 is attached hereto as **Annex "3"**.

VI.

EVEN WITHOUT THE CONSTITUTIONAL DUTY TO VOTE JOINTLY EXCEPT IN CASE OF REVOCATION OR EXTENSION OF THE PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*, BOTH HOUSES NEVERTHELESS EXPRESSED SUPPORT ON THE PROCLAMATION THROUGH A VOTE OF THE MAJORITY OF ITS MEMBERS AS EVIDENCED BY SENATE RESOLUTION NO. 49 AND HOUSE RESOLUTION NO. 1050.

105. As discussed above, there is no requirement under the Constitution for Congress to affirm or concur with the President's proclamation of martial law. Despite the absence of such requirement, both houses of Congress, with a majority of its respective members, still issued separate Resolutions expressing their support on President Duterte's proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*.

106. Senate Resolution No. 49 pertinently states:

> "WHEREAS, on the basis of information received by the Senators, the Senate is convinced that President Duterte declared martial law and suspended the privilege of the writ of habeas corpus in the whole of Mindanao because actual rebellion exists and that public safety requires it;
>
> WHEREAS, the Senate, at this time, agrees that there is no compelling reason to revoke Proclamation No. 216, series of 2017;
>
> WHEREAS, the Proclamation does not suspend the operation of the Constitution, which among others, guarantees respect for human rights and guards against any abuse or violation thereof: Now, therefore, be it
>
> *Resolved, as it is hereby resolved*, To express the sense of the Senate, that there is no compelling reason to revoke Proclamation No. 216, series of 2017 at this time."

Senate Resolution No. 49 was adopted by a majority vote of seventeen (17) affirmative votes and five (5) negative votes.

107. On the other hand, House Resolution No. 1050 states:

> **RESOLVED BY THE HOUSE OF REPRESENTATIVES**, to express its full support to President Rodrigo Duterte as it finds no reason to revoke Proclamation No. 216, entitled "*Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao*".

House Resolution No. 1050 was concurred by a majority of the members of the House of Representatives during its session on 31 May 2017.

From the foregoing, it is clear that both Houses of Congress, with a majority of its members, already expressed support on the President's proclamation of martial law.

108. Both houses also have no intention of revoking the president's proclamation. In fact, resolutions calling for joint session by Congress introduced in both Houses were not adopted due to the lack of votes in the Senate and the House of Representatives. Considering that the proposal to convene in joint session was not adopted by both Houses, it is clear that there was no intention to revoke the president's proclamation and thus, there was no need for Congress to vote jointly.

VII.

MATTERS AFFECTING NATIONAL SECURITY ARE CONSIDERED AS EXCEPTIONS TO THE RIGHT TO INFORMATION AND HENCE, NEED NOT BE DISCLOSED TO THE PUBLIC.

109. Petitioners assert their right to participate in congressional deliberations as adjunct to their constitutional right to information. According to petitioners, the failure to convene a joint session supposedly "deprives the public of transparent proceeding within which to be informed of the factual bases of Martial Law and the intended parameters of its implementation."[74]

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[74] *See* Tañada Petition, par. 101, p. 24.

110. Petitioners are mistaken. The right to information as enshrined in Section 7, Article III of the 1987 Constitution[75] is not absolute but subject to limitations imposed by law.

111. It is well-settled that there is a governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters.[76] In the recent case of *Sereno v. National Economic and Development Authority*,[77] the Honorable Court categorically declared that "the constitutional guarantee of the people's **right to information** **does not cover security matters and intelligence information**."

112. Further, the right to information does not extend to matters recognized as privileged information under the separation of powers.[78] Conversations, correspondences or discussions during executive sessions of either house of Congress are privileged information rooted in the separation of powers.[79] Accordingly, the exchange of ideas during congressional deliberations, free from the public eye and pressure by interested parties, is essential to protect the independence of the decision-making of the legislature.[80]

113. If Congress were to vote jointly to revoke or extend the President's declaration of martial law, members of both Houses would ineluctably deal with delicate and sensitive national security matters relating to armed public uprisings and atrocities committed by rebellious groups in Mindanao. The presence of senior officials of the AFP and other law enforcement agencies among other resource persons would be imperative to discuss military and intelligence information which may be classified as highly confidential or affecting the security of the state.

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[75] Section 7, Article III of the 1987 Constitution states: "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."
[76] *Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, December 9, 1998, *citing Almonte v. Vasquez*, 244 SCRA 286, 295, 297, May 23, 1995.
[77] G.R. No. 175210, February 1, 2016.
[78] *Chavez v. Public Estates Authority*, G.R. No. 133250, July 9, 2002.
[79] *Ibid.*
[80] *Id.*

114. It bears noting that in the Consolidated Petitions in *Lagman v. Executive Secretary,*[81] the Honorable Court, in determining the sufficiency of the factual bases of the President's proclamation of martial law, ordered the conduct of an executive session on the last day of the Oral Arguments because the facts to be discussed were classified as confidential.

115. Congressional sessions are generally open to the public. However, if the information to be discussed or documents to be submitted are classified as confidential, the Congress may exercise its inherent prerogative to hold executive sessions. By virtue of the principle of separation of powers, the determination as to whether the information is confidential or not belongs exclusively to Congress. Both Houses of Congress provide for rules in holding executive sessions. The following are the pertinent provisions of the Rules of the House of Representatives and of the Senate, respectively, to wit:

The Rules of the House of Representatives
16th Congress, as adopted by the 17th Congress

Rule XI The Session:

xxxx

Section 82. Sessions Open to the Public. - Sessions shall be open to the public. However, when the security of the State or the dignity of the House or any of its Members are affected by any motion or petition being considered, the House may hold executive sessions. xxxx

Section 83. Executive Sessions. - When the House decides to hold an executive session, the Speaker shall direct the galleries and hallways to be cleared and the doors closed. Only the Secretary General, the Sergeant-at-Arms and other persons specifically authorized by the House shall be admitted to the executive session. They shall preserve the confidentiality of everything read or discussed in the session.

The Rules of the Senate

Rule XLVII Executive Session:

[81] G.R. Nos. 231658, 231771 & 231774.

> Sec. 126. The executive sessions of the Senate shall be held always behind closed doors. In such sessions, only the Secretary, the Sergeant-at-Arms, and/or such other persons as may be authorized by the Senate may be admitted to the session hall.
>
> Sec. 127. Executive sessions shall be held whenever a Senator so requests it and his petition has been duly seconded, or when the security or the State or public interest so requires. Thereupon, the President shall order that the public be excluded from the gallery and the doors of the session hall be closed.
>
> xxxx

116. To preserve the confidentiality of the information as well as the documents submitted during executive sessions, Congress undertakes measures and even imposes punitive sanctions to its members and employees.[82]

117. Executive sessions in either house of Congress are confidential in character and shall not be disclosed to persons not specifically authorized to attend. These congressional deliberations partake the nature of a "deliberative process privilege," involving as it does the deliberative process of

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[82]The Rules of the House of Representatives, as adopted by the 17th Congress, state that:

Section 84. Confidential Documents. - The contents of confidential documents transmitted by the President or a head of a department of the Executive Department, as requested by the House, which require consideration in an executive session, shall not be revealed without leave of the House.

The Rules of the Senate state that:

Sec. 128. The President as well as Senators and the officials and employees of the Senate shall absolutely refrain from divulging any of the confidential matters taken up by the Senate, and all proceedings which might have taken place in the Senate in connection with the said matters shall be likewise considered as strictly confidential until the Senate, by two-thirds vote of all its Members, decides to lift the ban of secrecy.

Sec. 129. Any Senator who violates the provisions contained in the preceding section may, by a two-thirds vote of all the Senators, be expelled from the Senate, and if the violator is an official or employee of the Senate, he shall be dismissed.

Sec. 130. Whenever upon the request of the Senate or of any of its committees, the President of the Philippines or a Department Secretary sends to the Senate or to any of its committees certain confidential documents in connection with any matter pending therein; all proceedings relative to said documents shall be held behind closed doors and shall not be published without the consent of a majority of the Senators present in the session.

Sec. 131. All documents filed with the Senate after consideration shall be kept and preserved in the Archives of the Senate. No memorial, petition or any other document confidential in nature may be copied, withdrawn or taken away from the Archives or the Office of the Secretary or of any committee without the permission of the Secretary.

reaching a decision.[83] The "deliberative process privilege" exempts materials that are "predecisional" and "deliberative," but requires disclosure of policy statements and final opinions that have the force of law or explain an action that an agency has already taken.[84] The purpose of the privilege is "to protect the frank exchange of ideas and opinions critical to the government's decision-making process where disclosure would discourage such discussion in the future."[85]

118. Indeed, Congress may not be compelled to disclose deliberations on its floor because common assertions are still in the process of being formulated. Interpellations, motions and debates during congressional sessions are covered by the deliberative process privilege, to which the right of information cannot be invoked. Therefore, Congress has the ultimate discretion to determine which portions of their deliberations ought to be disclosed, taking into consideration national security matters. The right to information, however, remains inviolable as the official action of Congress, as to whether they will revoke or extend the proclamation of martial law, will be eventually reported to the public.

119. It is respectfully submitted that the restriction on the right to participate in the deliberations of Congress is necessary in the interest of national security and public safety.

120. Petitioners' perceived fear of being deprived of transparent proceedings is dispelled by the safeguards already in place in the 1987 Constitution. Aside from the power of Congress to revoke the proclamation of martial law, the Honorable Court, as a co-equal branch of government, has the power to review the sufficiency of the factual basis of the president's proclamation upon the filing of any citizen in an appropriate proceeding.

121. Being the representatives of the sovereign people, members of Congress have the sacred duty to report to their constituents the outcome of the deliberations, and their respective positions and votes on the issue, failing which, they become accountable to the voters. Conversely, every citizen,

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[83] *Department of Foreign Affairs v. BCA International Corporation*, G.R. No. 210858, June 29, 2016.
[84] *Ibid.*
[85] *Id. citing Vandelay Entm't, LLC v. Fallin*, 2014 OK 109 (December 16, 2014); *City of Colorado Springs v. White*, 967 P.2d 1042 (1998).

who has all the potential to be an agent of transformation in nation-building, has a vital role in making sure that the people they elect deserve the right to lead.

122. In sum, the petitioners' assertion of a Congressional duty to convene in joint session does not only overextend the parameters set by the 1987 Constitution, but also imposes an unnecessary duty. As seen from the acts of the House of Representatives and the Senate, it cannot be gainsaid that Congress has already fulfilled its Constitutional mandate. While not mandatory, Congress neither procrastinated nor reneged on its sworn duties when it heard the basis of Proclamation No. 216 through a closed-door meeting with the country's top military officials, and thereafter collectively voiced its support through the issuances of their respective resolutions. Indeed, the Congress even went beyond its Constitutional duty respecting the proclamation or suspension. Petitioners should not be allowed to use this Honorable Court in testing the autonomy and independence of Congress as a co-equal branch and in interfering with its discretionary acts as granted by the Constitution. "Prudence and respect for the co-equal departments of the government dictate that the Court should be cautious in entertaining actions that assail the constitutionality of the acts of the Executive or the Legislative department."[86]

PRAYER

WHEREFORE, it is respectfully prayed that this Honorable Court **DISMISS** the *Petition for Mandamus* dated 3 June 2017 and *Petition for Certiorari & Mandamus* dated 6 June 2017 for their procedural defects and for lack of merit.

Other relief, just and equitable under the premises, are also prayed for.

Makati City for Manila, 23 June 2017.

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[86] *Fortun v. Gloria-Macapagal Arroyo*, G.R. Nos. 190293, 190294, 190301, 190302, 190307, 190356 & 190380, March 20, 2012.