

BLAS F. OPLE, PETITIONER, VS. RUBEN D. TORRES, ALEXANDER AGUIRRE, HECTOR VILLANUEVA, CIELITO HABITO, ROBERT BARBERS, CARMENCITA REODICA, CESAR SARINO, RENATO VALENCIA, TOMAS P. ...

G.R. No. 127685. July 23, 1998

Ponente: PUNO, J.

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PUNO, J.:

The petition at bar is a commendable effort on the part of Senator Blas F. Ople to prevent the shrinking of the right to privacy, which the revered Mr. Justice Brandeis considered as "the most comprehensive of rights and the right most valued by civilized men." [1] Petitioner Ople prays that we invalidate Administrative Order No. 308 entitled "Adoption of a National Computerized Identification Reference System" on two important constitutional grounds, viz: one, it is a usurpation of the power of Congress to legislate, and two, it impermissibly intrudes on our citizenry's protected zone of privacy. We grant the petition for the rights sought to be vindicated by the petitioner need stronger barriers against further erosion.

A.O. No. 308 was issued by President Fidel V. Ramos on December 12, 1996 and reads as follows:

"ADOPTION OF A NATIONAL COMPUTERIZED IDENTIFICATION REFERENCE SYSTEM

WHEREAS, there is a need to provide Filipino citizens and foreign residents with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities;

WHEREAS, this will require a computerized system to properly and efficiently identify persons seeking basic services on social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations;

WHEREAS, a concerted and collaborative effort among the various basic services and social security providing agencies and other government instrumentalities is required to achieve such a system;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby direct the following:

SECTION 1. Establishment of a National Computerized Identification Reference System. A decentralized Identification Reference System among the key basic services and social security providers is hereby established.

SEC. 2 Inter-Agency Coordinating Committee. An Inter-Agency Coordinating Committee (IACC) to draw-up the implementing guidelines and oversee the implementation of the System is hereby created, chaired by the Executive Secretary, with the following as members:

Head, Presidential Management Staff
Secretary, National Economic Development Authority
Secretary, Department of the Interior and
Local Government

Secretary, Department of Health
Administrator, Government Service Insurance
System,
Administrator, Social Security System, Administrator, National Statistics Office Managing Director, National
Computer Center.

SEC. 3. Secretariat. The National Computer Center (NCC) is hereby designated as secretariat to the IACC and as such shall provide administrative and technical support to the IACC.

SEC. 4. Linkage Among Agencies. The Population Reference Number (PRN) generated by the NSO shall serve as the common reference number to establish a linkage among concerned agencies. The IACC Secretariat shall coordinate with the different Social Security and Services Agencies to establish the standards in the use of Biometrics Technology and in computer application designs of their respective systems.

SEC. 5. Conduct of Information Dissemination Campaign. The Office of the Press Secretary, in coordination with the National Statistics Office, the GSIS and SSS as lead agencies and other concerned agencies shall undertake a massive tri-media information dissemination campaign to educate and raise public awareness on the importance and use of the PRN and the Social Security Identification Reference.

SEC. 6. Funding. The funds necessary for the implementation of the system shall be sourced from the respective budgets of the concerned agencies.

SEC. 7. Submission of Regular Reports. The NSO, GSIS and SSS shall submit regular reports to the Office of the President, through the IACC, on the status of implementation of this undertaking.

SEC. 8. Effectivity. This Administrative Order shall take effect immediately.

DONE in the City of Manila, this 12th day of December in the year of Our Lord, Nineteen Hundred and Ninety-Six.

(SGD.) FIDEL V. RAMOS"

A.O. No. 308 was published in four newspapers of general circulation on January 22, 1997 and January 23, 1997. On January 24, 1997, petitioner filed the instant petition against respondents, then Executive Secretary Ruben Torres and the heads of the government agencies, who as members of the Inter-Agency Coordinating Committee, are charged with the implementation of A.O. No. 308. On April 8, 1997, we issued a temporary restraining order enjoining its implementation.

Petitioner contends:

"A. THE ESTABLISHMENT OF A NATIONAL COMPUTERIZED IDENTIFICATION REFERENCE SYSTEM REQUIRES A LEGISLATIVE ACT. THE ISSUANCE OF A.O. NO. 308 BY THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES IS, THEREFORE, AN UNCONSTITUTIONAL USURPATION OF THE LEGISLATIVE POWERS OF THE CONGRESS OF THE REPUBLIC OF THE PHILIPPINES.

B. THE APPROPRIATION OF PUBLIC FUNDS BY THE PRESIDENT FOR THE IMPLEMENTATION OF A.O. NO. 308 IS AN UNCONSTITUTIONAL USURPATION OF THE EXCLUSIVE RIGHT OF CONGRESS TO APPROPRIATE PUBLIC FUNDS FOR EXPENDITURE.

C. THE IMPLEMENTATION OF A.O. NO. 308 INSIDIOUSLY LAYS THE GROUNDWORK FOR A SYSTEM WHICH WILL VIOLATE THE BILL OF RIGHTS ENSHRINED IN THE CONSTITUTION."[2]

Respondents counter-argue:

A. THE INSTANT PETITION IS NOT A JUSTICIABLE CASE AS WOULD WARRANT A JUDICIAL

REVIEW;

B. A.O. NO. 308 [1996] WAS ISSUED WITHIN THE EXECUTIVE AND ADMINISTRATIVE POWERS OF THE PRESIDENT WITHOUT ENCROACHING ON THE LEGISLATIVE POWERS OF CONGRESS;

C. THE FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE IDENTIFICATION REFERENCE SYSTEM MAY BE SOURCED FROM THE BUDGETS OF THE CONCERNED AGENCIES;

D. A.O. NO. 308 [1996] PROTECTS AN INDIVIDUAL'S INTEREST IN PRIVACY.[3]

We now resolve.

I

As is usual in constitutional litigation, respondents raise the threshold issues relating to the standing to sue of the petitioner and the justiciability of the case at bar. More specifically, respondents aver that petitioner has no legal interest to uphold and that the implementing rules of A.O. No. 308 have yet to be promulgated.

These submissions do not deserve our sympathetic ear. Petitioner Ople is a distinguished member of our Senate. As a Senator, petitioner is possessed of the requisite standing to bring suit raising the issue that the issuance of A.O. No. 308 is a usurpation of legislative power.[4] As taxpayer and member of the Government Service Insurance System (GSIS), petitioner can also impugn the legality of the misalignment of public funds and the misuse of GSIS funds to implement A.O. No. 308.[5]

The ripeness for adjudication of the petition at bar is not affected by the fact that the implementing rules of A.O. No. 308 have yet to be promulgated. Petitioner Ople assails A.O. No. 308 as invalid per se and as infirmed on its face. His action is not premature for the rules yet to be promulgated cannot cure its fatal defects. Moreover, the respondents themselves have started the implementation of A.O. No. 308 without waiting for the rules. As early as January 19, 1997, respondent Social Security System (SSS) caused the publication of a notice to bid for the manufacture of the National Identification (ID) card.[6] Respondent Executive Secretary Torres has publicly announced that representatives from the GSIS and the SSS have completed the guidelines for the national identification system.[7] All signals from the respondents show their unswerving will to implement A.O. No. 308 and we need not wait for the formality of the rules to pass judgment on its constitutionality. In this light, the dissenters insistence that we tighten the rule on standing is not a commendable stance as its result would be to throttle an important constitutional principle and a fundamental right.

II

We now come to the core issues. Petitioner claims that A.O. No. 308 is not a mere administrative order but a law and hence, beyond the power of the President to issue. He alleges that A.O. No. 308 establishes a system of identification that is all-encompassing in scope, affects the life and liberty of every Filipino citizen and foreign resident, and more particularly, violates their right to privacy.

Petitioner's sedulous concern for the Executive not to trespass on the lawmaking domain of Congress is understandable. The blurring of the demarcation line between the power of the Legislature to make laws and the power of the Executive to execute laws will disturb their delicate balance of power and cannot be allowed. Hence, the exercise by one branch of government of power belonging to another will be given a stricter scrutiny by this Court.

The line that delineates Legislative and Executive power is not indistinct. Legislative power is "the authority, under the Constitution, to make laws, and to alter and repeal them." [8] The Constitution, as the will of the people

in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines.[9] The grant of legislative power to Congress is broad, general and comprehensive.[10] The legislative body possesses plenary power for all purposes of civil government.[11] Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere.[12] In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest.[13]

While Congress is vested with the power to enact laws, the President executes the laws.[14] The executive power is vested in the President.[15] It is generally defined as the power to enforce and administer the laws.[16] It is the power of carrying the laws into practical operation and enforcing their due observance.[17]

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department.[18] He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials.[19] Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted administrative power over bureaus and offices under his control to enable him to discharge his duties effectively.[20]

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs.[21] It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents.[22] To this end, he can issue administrative orders, rules and regulations.

Prescinding from these precepts, we hold that A.O. No. 308 involves a subject that is not appropriate to be covered by an administrative order. An administrative order is:

"Sec. 3. Administrative Orders.-- Acts of the President which relate to particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders." [23]

An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy.[24] We reject the argument that A.O. No. 308 implements the legislative policy of the Administrative Code of 1987. The Code is a general law and "incorporates in a unified document the major structural, functional and procedural principles of governance"[25] and "embodies changes in administrative structures and procedures designed to serve the people." [26] The Code is divided into seven (7) Books: Book I deals with Sovereignty and General Administration, Book II with the Distribution of Powers of the three branches of Government, Book III on the Office of the President, Book IV on the Executive Branch, Book V on the Constitutional Commissions, Book VI on National Government Budgeting, and Book VII on Administrative Procedure. These Books contain provisions on the organization, powers and general administration of the executive, legislative and judicial branches of government, the organization and administration of departments, bureaus and offices under the executive branch, the organization and functions of the Constitutional Commissions and other constitutional bodies, the rules on the national government budget, as well as guidelines for the exercise by administrative agencies of quasi-legislative and quasi-judicial powers. The Code covers both the internal administration of government, i.e., internal organization, personnel and recruitment, supervision and discipline, and the effects of the functions performed by administrative officials on private individuals or parties outside government.[27]

It cannot be simplistically argued that A.O. No. 308 merely implements the Administrative Code of 1987. It

establishes for the first time a National Computerized Identification Reference System. Such a System requires a delicate adjustment of various contending state policies-- the primacy of national security, the extent of privacy interest against dossier-gathering by government, the choice of policies, etc. Indeed, the dissent of Mr. Justice Mendoza states that the A.O. No. 308 involves the all-important freedom of thought. As said administrative order redefines the parameters of some basic rights of our citizenry vis-a-vis the State as well as the line that separates the administrative power of the President to make rules and the legislative power of Congress, it ought to be evident that it deals with a subject that should be covered by law.

Nor is it correct to argue as the dissenters do that A.O. No. 308 is not a law because it confers no right, imposes no duty, affords no protection, and creates no office. Under A.O. No. 308, a citizen cannot transact business with government agencies delivering basic services to the people without the contemplated identification card. No citizen will refuse to get this identification card for no one can avoid dealing with government. It is thus clear as daylight that without the ID, a citizen will have difficulty exercising his rights and enjoying his privileges. Given this reality, the contention that A.O. No. 308 gives no right and imposes no duty cannot stand.

Again, with due respect, the dissenting opinions unduly expand the limits of administrative legislation and consequently erodes the plenary power of Congress to make laws. This is contrary to the established approach defining the traditional limits of administrative legislation. As well stated by Fisher: "x x x Many regulations however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policy-making that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws." [28]

III

Assuming, arguendo, that A.O. No. 308 need not be the subject of a law, still it cannot pass constitutional muster as an administrative legislation because facially it violates the right to privacy. The essence of privacy is the "right to be let alone." [29] In the 1965 case of *Griswold v. Connecticut*, [30] the United States Supreme Court gave more substance to the right of privacy when it ruled that the right has a constitutional foundation. It held that there is a right of privacy which can be found within the penumbras of the First, Third, Fourth, Fifth and Ninth Amendments, [31] viz:

"Specific guarantees in the Bill of Rights have penumbras formed by emanations from these guarantees that help give them life and substance x x x. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'"

In the 1968 case of *Morfe v. Mutuc*, [32] we adopted the *Griswold* ruling that there is a constitutional right to privacy. Speaking thru Mr. Justice, later Chief Justice, Enrique Fernando, we held:

"xxx

The *Griswold* case invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons; rightfully it stressed "a relationship lying within the zone of privacy created by several fundamental

constitutional guarantees." It has wider implications though. The constitutional right to privacy has come into its own.

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: "The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector-- protection, in other words, of the dignity and integrity of the individual--has become increasingly important as modern society has developed. All the forces of a technological age --industrialization, urbanization, and organization-- operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."

Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution.[33] It is expressly recognized in Section 3(1) of the Bill of Rights:

"Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

Other facets of the right to privacy are protected in various provisions of the Bill of Rights, viz:[34]

"Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

x x x.

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

x x x.

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Sec. 17. No person shall be compelled to be a witness against himself."

Zones of privacy are likewise recognized and protected in our laws. The Civil Code provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another.[35] It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person,[36] and recognizes the privacy of letters and other private communications.[37] The Revised Penal Code makes a crime the violation of secrets by an officer,[38] the revelation of trade and industrial secrets,[39] and trespass to dwelling.[40] Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law,[41] the Secrecy of Bank Deposit Act[42] and the Intellectual Property Code.[43] The

Rules of Court on privileged communication likewise recognize the privacy of certain information.[44]

Unlike the dissenters, we prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn. A.O. No. 308 is predicated on two considerations: (1) the need to provide our citizens and foreigners with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities and (2) the need to reduce, if not totally eradicate, fraudulent transactions and misrepresentations by persons seeking basic services. It is debatable whether these interests are compelling enough to warrant the issuance of A.O. No. 308. But what is not arguable is the broadness, the vagueness, the overbreadth of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger.

The heart of A.O. No. 308 lies in its Section 4 which provides for a Population Reference Number (PRN) as a "common reference number to establish a linkage among concerned agencies" through the use of "Biometrics Technology" and "computer application designs."

Biometry or biometrics is "the science of the application of statistical methods to biological facts; a mathematical analysis of biological data." [45] The term "biometrics" has now evolved into a broad category of technologies which provide precise confirmation of an individual's identity through the use of the individual's own physiological and behavioral characteristics.[46] A physiological characteristic is a relatively stable physical characteristic such as a fingerprint, retinal scan, hand geometry or facial features. A behavioral characteristic is influenced by the individual's personality and includes voice print, signature and keystroke.[47] Most biometric identification systems use a card or personal identification number (PIN) for initial identification. The biometric measurement is used to verify that the individual holding the card or entering the PIN is the legitimate owner of the card or PIN.[48]

A most common form of biological encoding is finger-scanning where technology scans a fingertip and turns the unique pattern therein into an individual number which is called a biocrypt. The biocrypt is stored in computer data banks[49] and becomes a means of identifying an individual using a service. This technology requires one's fingertip to be scanned every time service or access is provided.[50] Another method is the retinal scan. Retinal scan technology employs optical technology to map the capillary pattern of the retina of the eye. This technology produces a unique print similar to a finger print.[51] Another biometric method is known as the "artificial nose." This device chemically analyzes the unique combination of substances excreted from the skin of people.[52] The latest on the list of biometric achievements is the thermogram. Scientists have found that by taking pictures of a face using infra-red cameras, a unique heat distribution pattern is seen. The different densities of bone, skin, fat and blood vessels all contribute to the individual's personal "heat signature." [53]

In the last few decades, technology has progressed at a galloping rate. Some science fictions are now science facts. Today, biometrics is no longer limited to the use of fingerprint to identify an individual. It is a new science that uses various technologies in encoding any and all biological characteristics of an individual for identification. It is noteworthy that A.O. No. 308 does not state what specific biological characteristics and what particular biometrics technology shall be used to identify people who will seek its coverage. Considering the banquet of options available to the implementors of A.O. No. 308, the fear that it threatens the right to privacy of our people is not groundless.

A.O. No. 308 should also raise our antennas for a further look will show that it does not state whether encoding of data is limited to biological information alone for identification purposes. In fact, the Solicitor General claims that the adoption of the Identification Reference System will contribute to the "generation of population data for

development planning." [54] This is an admission that the PRN will not be used solely for identification but for the generation of other data with remote relation to the avowed purposes of A.O. No. 308. Clearly, the indefiniteness of A.O. No. 308 can give the government the roving authority to store and retrieve information for a purpose other than the identification of the individual through his PRN.

The potential for misuse of the data to be gathered under A.O. No. 308 cannot be underplayed as the dissenters do. Pursuant to said administrative order, an individual must present his PRN everytime he deals with a government agency to avail of basic services and security. His transactions with the government agency will necessarily be recorded-- whether it be in the computer or in the documentary file of the agency. The individual's file may include his transactions for loan availments, income tax returns, statement of assets and liabilities, reimbursements for medication, hospitalization, etc. The more frequent the use of the PRN, the better the chance of building a huge and formidable information base through the electronic linkage of the files. [55] The data may be gathered for gainful and useful government purposes; but the existence of this vast reservoir of personal information constitutes a covert invitation to misuse, a temptation that may be too great for some of our authorities to resist. [56]

We can even grant, arguendo, that the computer data file will be limited to the name, address and other basic personal information about the individual. [57] Even that hospitable assumption will not save A.O. No. 308 from constitutional infirmity for again said order does not tell us in clear and categorical terms how these information gathered shall be handled. It does not provide who shall control and access the data, under what circumstances and for what purpose. These factors are essential to safeguard the privacy and guaranty the integrity of the information. [58] Well to note, the computer linkage gives other government agencies access to the information. Yet, there are no controls to guard against leakage of information. When the access code of the control programs of the particular computer system is broken, an intruder, without fear of sanction or penalty, can make use of the data for whatever purpose, or worse, manipulate the data stored within the system. [59]

It is plain and we hold that A.O. No. 308 falls short of assuring that personal information which will be gathered about our people will only be processed for unequivocally specified purposes. [60] The lack of proper safeguards in this regard of A.O. No. 308 may interfere with the individual's liberty of abode and travel by enabling authorities to track down his movement; it may also enable unscrupulous persons to access confidential information and circumvent the right against self-incrimination; it may pave the way for "fishing expeditions" by government authorities and evade the right against unreasonable searches and seizures. [61] The possibilities of abuse and misuse of the PRN, biometrics and computer technology are accentuated when we consider that the individual lacks control over what can be read or placed on his ID, much less verify the correctness of the data encoded. [62] They threaten the very abuses that the Bill of Rights seeks to prevent. [63]

The ability of a sophisticated data center to generate a comprehensive cradle-to-grave dossier on an individual and transmit it over a national network is one of the most graphic threats of the computer revolution. [64] The computer is capable of producing a comprehensive dossier on individuals out of information given at different times and for varied purposes. [65] It can continue adding to the stored data and keeping the information up to date. Retrieval of stored data is simple. When information of a privileged character finds its way into the computer, it can be extracted together with other data on the subject. [66] Once extracted, the information is putty in the hands of any person. The end of privacy begins.

Though A.O. No. 308 is undoubtedly not narrowly drawn, the dissenting opinions would dismiss its danger to the right to privacy as speculative and hypothetical. Again, we cannot countenance such a laidback posture. The Court will not be true to its role as the ultimate guardian of the people's liberty if it would not immediately smother the sparks that endanger their rights but would rather wait for the fire that could consume them.

We reject the argument of the Solicitor General that an individual has a reasonable expectation of privacy with regard to the National ID and the use of biometrics technology as it stands on quicksand. The reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether by his conduct, the individual has exhibited an expectation of privacy; and (2) whether this expectation is one that society recognizes as reasonable.[67] The factual circumstances of the case determines the reasonableness of the expectation.[68] However, other factors, such as customs, physical surroundings and practices of a particular activity, may serve to create or diminish this expectation.[69] The use of biometrics and computer technology in A.O. No. 308 does not assure the individual of a reasonable expectation of privacy.[70] As technology advances, the level of reasonably expected privacy decreases.[71] The measure of protection granted by the reasonable expectation diminishes as relevant technology becomes more widely accepted.[72] The security of the computer data file depends not only on the physical inaccessibility of the file but also on the advances in hardware and software computer technology. A.O. No. 308 is so widely drawn that a minimum standard for a reasonable expectation of privacy, regardless of technology used, cannot be inferred from its provisions.

The rules and regulations to be drawn by the IACC cannot remedy this fatal defect. Rules and regulations merely implement the policy of the law or order. On its face, A.O. No. 308 gives the IACC virtually unfettered discretion to determine the metes and bounds of the ID System.

Nor do our present laws provide adequate safeguards for a reasonable expectation of privacy. Commonwealth Act No. 591 penalizes the disclosure by any person of data furnished by the individual to the NSO with imprisonment and fine.[73] Republic Act No. 1161 prohibits public disclosure of SSS employment records and reports.[74] These laws, however, apply to records and data with the NSO and the SSS. It is not clear whether they may be applied to data with the other government agencies forming part of the National ID System. The need to clarify the penal aspect of A.O. No. 308 is another reason why its enactment should be given to Congress.

Next, the Solicitor General urges us to validate A.O. No. 308's abridgment of the right of privacy by using the rational relationship test.[75] He stressed that the purposes of A.O. No. 308 are: (1) to streamline and speed up the implementation of basic government services, (2) eradicate fraud by avoiding duplication of services, and (3) generate population data for development planning. He concludes that these purposes justify the incursions into the right to privacy for the means are rationally related to the end.[76]

We are not impressed by the argument. In *Morfe v. Mutuc*,^[77] we upheld the constitutionality of R.A. 3019, the Anti-Graft and Corrupt Practices Act, as a valid police power measure. We declared that the law, in compelling a public officer to make an annual report disclosing his assets and liabilities, his sources of income and expenses, did not infringe on the individual's right to privacy. The law was enacted to promote morality in public administration by curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service.[78]

The same circumstances do not obtain in the case at bar. For one, R.A. 3019 is a statute, not an administrative order. Secondly, R.A. 3019 itself is sufficiently detailed. The law is clear on what practices were prohibited and penalized, and it was narrowly drawn to avoid abuses. In the case at bar, A.O. No. 308 may have been impelled by a worthy purpose, but, it cannot pass constitutional scrutiny for it is not narrowly drawn. And we now hold that when the integrity of a fundamental right is at stake, this court will give the challenged law, administrative order, rule or regulation a stricter scrutiny. It will not do for the authorities to invoke the presumption of regularity in the performance of official duties. Nor is it enough for the authorities to prove that their act is not irrational for a basic right can be diminished, if not defeated, even when the government does not act irrationally. They must satisfactorily show the presence of compelling state interests and that the law, rule, or regulation is narrowly drawn to preclude abuses. This approach is demanded by the 1987 Constitution whose entire matrix is designed to

protect human rights and to prevent authoritarianism. In case of doubt, the least we can do is to lean towards the stance that will not put in danger the rights protected by the Constitution.

The case of *Whalen v. Roe*[79] cited by the Solicitor General is also off-line. In *Whalen*, the United States Supreme Court was presented with the question of whether the State of New York could keep a centralized computer record of the names and addresses of all persons who obtained certain drugs pursuant to a doctor's prescription. The New York State Controlled Substances Act of 1972 required physicians to identify patients obtaining prescription drugs enumerated in the statute, i.e., drugs with a recognized medical use but with a potential for abuse, so that the names and addresses of the patients can be recorded in a centralized computer file of the State Department of Health. The plaintiffs, who were patients and doctors, claimed that some people might decline necessary medication because of their fear that the computerized data may be readily available and open to public disclosure; and that once disclosed, it may stigmatize them as drug addicts.[80] The plaintiffs alleged that the statute invaded a constitutionally protected zone of privacy, i.e, the individual interest in avoiding disclosure of personal matters, and the interest in independence in making certain kinds of important decisions. The U.S. Supreme Court held that while an individual's interest in avoiding disclosure of personal matters is an aspect of the right to privacy, the statute did not pose a grievous threat to establish a constitutional violation. The Court found that the statute was necessary to aid in the enforcement of laws designed to minimize the misuse of dangerous drugs. The patient-identification requirement was a product of an orderly and rational legislative decision made upon recommendation by a specially appointed commission which held extensive hearings on the matter. Moreover, the statute was narrowly drawn and contained numerous safeguards against indiscriminate disclosure. The statute laid down the procedure and requirements for the gathering, storage and retrieval of the information. It enumerated who were authorized to access the data. It also prohibited public disclosure of the data by imposing penalties for its violation. In view of these safeguards, the infringement of the patients' right to privacy was justified by a valid exercise of police power. As we discussed above, A.O. No. 308 lacks these vital safeguards.

Even while we strike down A.O. No. 308, we spell out in neon that the Court is not per se against the use of computers to accumulate, store, process, retrieve and transmit data to improve our bureaucracy. Computers work wonders to achieve the efficiency which both government and private industry seek. Many information systems in different countries make use of the computer to facilitate important social objectives, such as better law enforcement, faster delivery of public services, more efficient management of credit and insurance programs, improvement of telecommunications and streamlining of financial activities.[81] Used wisely, data stored in the computer could help good administration by making accurate and comprehensive information for those who have to frame policy and make key decisions.[82] The benefits of the computer has revolutionized information technology. It developed the internet,[83] introduced the concept of cyberspace[84] and the information superhighway where the individual, armed only with his personal computer, may surf and search all kinds and classes of information from libraries and databases connected to the net.

In no uncertain terms, we also underscore that the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good. It merely requires that the law be narrowly focused[85] and a compelling interest justify such intrusions.[86] Intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law or order that invades individual privacy will be subjected by this Court to strict scrutiny. The reason for this stance was laid down in *Morfe v. Mutuc*, to wit:

"The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between

absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector-- protection, in other words, of the dignity and integrity of the individual-- has become increasingly important as modern society has developed. All the forces of a technological age-- industrialization, urbanization, and organization-- operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."[87]

IV

The right to privacy is one of the most threatened rights of man living in a mass society. The threats emanate from various sources-- governments, journalists, employers, social scientists, etc.[88] In the case at bar, the threat comes from the executive branch of government which by issuing A.O. No. 308 pressures the people to surrender their privacy by giving information about themselves on the pretext that it will facilitate delivery of basic services. Given the record-keeping power of the computer, only the indifferent will fail to perceive the danger that A.O. No. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens. It is timely to take note of the well-worded warning of Calvin, Jr., "the disturbing result could be that everyone will live burdened by an unerasable record of his past and his limitations. In a way, the threat is that because of its record-keeping, the society will have lost its benign capacity to forget."[89] Oblivious to this counsel, the dissents still say we should not be too quick in labelling the right to privacy as a fundamental right. We close with the statement that the right to privacy was not engraved in our Constitution for flattery.

IN VIEW WHEREOF, the petition is granted and Administrative Order No. 308 entitled "Adoption of a National Computerized Identification Reference System" declared null and void for being unconstitutional.
SO ORDERED.

Narvasa, C.J., Melo, and Quisumbing, JJ., joins J. Kapunan and J. Mendoza in their dissents.

Regalado, J., in the result.

Davide, Jr., in the result; joins J. Panganiban in his separate opinion.

Romero, Vitug and Panganiban, JJ., see separate opinion.

Kapunan, and Mendoza, JJ., see dissenting opinion.

Bellosillo, and Martinez, JJ., concur.

Purisima, J., joins J. Mendoza's dissent.

[1] Dissenting Opinion of Justice Brandeis in *Olmstead v. United States*, 277 U.S. 438, 478 [1928].

[2] Petition, p. 9, Rollo, p. 11.

[3] Comment, pp. 6, 9, 14, 15, Rollo, pp. 65, 68, 73-74.

[4] *Philconsa v. Enriquez*, 235 SCRA 506 [1994]; *Guingona v. PCGG*, 207 SCRA 659 [1992]; *Tolentino v. Commission on Elections*, 41 SCRA 702 [1971].

[5] *Sanidad v. Commission on Elections*, 73 SCRA 333 [1976]; *Pascual v. Secretary of Public Works*, 110 Phil. 331 [1960].

[6] "Invitation to Bid," Annex "E" to the Petition, Rollo, p. 50.

[7] Annex "B" to Petitioner's Reply, Rollo, p. 144.

- [8] *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 276 [1927].
- [9] Section 1, Article VI, 1987 Constitution
- [10] Fernando, *The Philippine Constitution*, pp. 175-176 [1974].
- [11] *Id.*, at 177; citing the concurring opinion of Justice Laurel in *Schneckenburger v. Moran*, 63 Phil. 249, 266 [1936].
- [12] *Vera v. Avelino*, 77 Phil. 192, 212 [1936].
- [13] See concurring opinion of Justice Laurel in *Schneckenburger v. Moran*, *supra*, at 266-267.
- [14] *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 305 [1927].
- [15] Section 1, Article VII, 1987 Constitution.
- [16] Cruz, *Philippine Political Law*, p. 173 [1996].
- [17] Tanada and Carreon, *Political Law of the Philippines*, vol. 1, p. 275 [1961].
- [18] Section 17, Article VII of the 1987 Constitution provides:
- "Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed."
- [19] *Pelaez v. Auditor General*, 15 SCRA 569, 583 [1965].
- [20] Sinco, *Philippine Political Law*, pp. 234-235 [1962].
- [21] *Id.*, at 234.
- [22] *Id.*, at 235.
- [23] Section 3, Chapter 2, Title I, Book III, *Administrative Code of 1987*.
- [24] Cruz, *Philippine Administrative Law*, p.18 (1991).
- [25] Third Whereas Clause, *Administrative Code of 1987*.
- [26] Fourth Whereas Clause, *Administrative Code of 1987*.
- [27] See Cortes, *Philippine Administrative Law*, pp. 2-5 [1984].
- [28] Fisher, *Constitutional Conflicts Between Congress and the President*, 4th ed., pp. 106-107.
- [29] Cooley on Torts, Sec. 135, vol. 1, 4th ed., [1932]; see also Warren and Brandeis, "The Right to Privacy," 4 *Harvard Law Review* 193-220 [1890] - this article greatly influenced the enactment of privacy statutes in the United States (Cortes, I., *The Constitutional Foundations of Privacy*, p. 15 [1970]).
- [30] 381 U.S. 479, 14 L. ed. 2d 510 [1965].

[31] AMENDMENT I [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT III [1791]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV [1791]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

x x x

AMENDMENT IX [1791]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[32] 22 SCRA 424, 444-445.

[33] Morfe v. Mutuc, 22 SCRA 424, 444 [1968]; Cortes, The Constitutional Foundations of Privacy, p. 18 [1970].

[34] Cortes, The Constitutional Foundations of Privacy, p. 18 [1970].

[35] Article 26 of the Civil Code provides:

"Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- (1) Prying into the privacy of another's residence;
- (2) Meddling with or disturbing the private life or family relations of another;
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition."

[36] Article 32, Civil Code.

[37] Article 723, Civil Code.

[38] Article 229, Revised Penal Code.

[39] Articles 290-292, Revised Penal Code.

[40] Article 280, Revised Penal Code.

[41] R.A. 4200.

[42] R.A. 1405.

[43] R.A. 8293.

[44] Section 24, Rule 130 [C], Revised Rules on Evidence.

[45] "Biometry," Dorland's Illustrated Medical Dictionary, 24th ed. [1965]. "Biometry" or "biometrics" is literally, the measurement of living things; but it is generally used to mean the application of mathematics to biology. The term is now largely obsolete as a biological science since mathematical or statistical work is an integral part of most biological disciplines (The Dictionary of Science [1993]).

[46] "Biometric Identification," <http://www.afmc.wpafb.af.mil/organizations/HQ-AFMC/LG/LSO/LOA/bio.html>; see also "Biometrics Explained- Section-1," <http://www.ncsa.com/services/consortia/cbdc/sec1.html>.

[47] Id.

[48] Id.

[49] Or in microchips of smart cards and magnetic strips of bank cards.

[50] "Privacy at Risk, Finger-scanning for Ideology and Profit" [1998], <file:///DI/commentary.html>

[51] "Biometric Identification," <http://www.afmc.wpafb.af.mil/organizations/HQ-AFMC/LG/LSO/LOA/bio.html>

[52] "The Libertarian Library: Facing Up to Biometrics," The Mouse Monitor, The International Journal of Bureau-Rat Control [1998], <http://www.cyberhaven.com/libertarian/biomet.html>.

[53] Id. The thermogram is so accurate that it can tell identical twins apart and cannot be fooled by cosmetic surgery or disguises, including facial hair.

[54] "An updated national population register will provide a suitable base for all types of planning and programming of government facilities and services" (Memorandum of the Solicitor General, p. 20, Rollo, p. 210).

[55] Simitis, "Reviewing Privacy in an Information Society," University of Pennsylvania Law Review, vol. 135: 707, 717 [March 1985].

[56] Sloan, I. Law of Privacy Rights in a Technological Society, p. 6 [1986].

[57] Respondent GSIS, through counsel, claims that the basic information shall be limited to the individual's full name, place of birth, date of birth, photograph, signature and thumbmark (Comment of Respondent GSIS, p. 6, Rollo, p. 101).

[58] Otani, K. "Information Security in the Network Age," 70 Philippine Law Journal, 1, 9 [1995].

[59] Cortes, I., The Constitutional Foundations of Privacy, p. 12 (1970).

[60] Simitis, "Reviewing Privacy in an Information Society," University of Pennsylvania Law Review, vol. 135: 707, 740 [March 1987].

[61] *Ibid.*, p. 718.

[62] The right to control the collection, maintenance, use, and dissemination of data about oneself is called "informational privacy" (Hancock, G., "California's Privacy Act: Controlling Government's Use of Information?" 32 *Stanford Law Review* no. 5, p. 1001 [May 1980]. The right to make personal decisions or conduct personal activities without intrusion, observation or interference is called "autonomy privacy" (*Hill v. NCAA*, 865 P. 2d 633, 652-654 [Cal. 1994].

[63] Hosch, "The Interest in Limiting the Disclosure of Personal Information: A Constitutional Analysis," *Vanderbilt Law Review* vol. 36: 139, 142 [Jan. 1983].

[64] Miller, "Personal Privacy in the Computer Age, The Challenge of a New Technology in an Information-Oriented Society," 67 *Michigan Law Review* 1091, 1119 [1969]; see also Cortes, *supra*, at 13.

[65] Cortes, I. *The Constitutional Foundation of Privacy*, p.12 [1970].

[66] *Id.*

[67] *Rakas v. Illinois*, 439 U.S. 128, 143-144 [1978]; see the decision and Justice Harlan's concurring opinion in *Katz v. United States*, 389 U.S. 347, 353, 361, 19 L. ed. 2d 576, 583, 587-589 [1967]; see also Southard, "Individual Privacy and Governmental Efficiency: Technology's Effect on the Government's Ability to Gather, Store, and Distribute Information" (*Computer/Law Journal*, vol. IX, pp. 359, 367, note 63 [1989]).

[68] Kennedy, "Note: Emasculating a State's Constitutional Right to Privacy: The California Supreme Court's Decision in *Hill v. NCAA*," *Temple Law Review*, vol. 68: 1497, 1517 [1995].

[69] *Id.*

[70] Southard, *supra*, at 369.

[71] *Id.*; see also Laurence H. Tribe, "The Constitution in Cyberspace: Law and Liberty Beyond the Electronic Frontier," Keynote Address at the First Conference on Computers, Freedom and Privacy, at Jim Warren & Computer Professionals for Social Responsibility [1991].

[72] As one author has observed, previously, one could take steps to ensure an expectation of privacy in a private place, e.g., locking of doors and closing of curtains. Because advances in surveillance technology have made these precautions meaningless, the expectation of the privacy they offer is no longer justifiable and reasonable--Southard, *supra*, at 369.

[73] Section 4, Commonwealth Act No. 591 [1940].

[74] Sections 24 [c] and 28 [e], R.A. 1161, as amended.

[75] Citing *Morfe v. Mutuc*, 22 SCRA 424, 445 [1968].

[76] Comment of the Solicitor General, p. 16, Rollo, p. 75.

[77] *Op. cit.*, note 76.

[78] *Id.*, at 435.

[79] 429 U.S. 589, 51 L ed. 2d 64 [1977].

[80] Some of the patients were children whose parents feared would be stigmatized by the State's central filing system.

- [81] Sloan, Law of Privacy Rights in a Technological Society, p. 4 [1986].
- [82] Southard, "Individual Privacy and Governmental Efficiency: Technology's Effect on the Government's Ability to Gather, Store, and Distribute Information," IX Computer/Law Journal 359, 360 [1989].
- [83] The Internet is a decentralized network interconnected by the TCP/IP protocol. The Net was started as a military network ARPANET in 1969 by the US Department of Defense for the purpose of networking main frame computers to prepare against missile weapons. It opened to public research organizations and universities in 1983 and has been interconnected with commercial networks since 1990 (Kazuko Otani, "Information Security in the Network Age," Philippine Law Journal, vol. 70: 1, 2 [1995]).
- [84] Cyberspace is a place located in no particular geographical location but available to anyone, anywhere in the world, with access to the internet (Darrel Menthe, "Jurisdiction in Cyberspace: A Theory of International Spaces 4 Mich. Tel. Tech. L. Rev. 3 (April 23, 1998), .
- [85] Southard, *supra*, at 361-362
- [86] *Id*; White v. Davis, 533 P. 2d 222 [Cal. 1975]; City of Sta. Barbara v. Adamson, 610 P. 2d 436 [Cal. 1980]. In his concurring opinion in Whalen v. Roe, Justice Brennan stated that a statute that deprives an individual of his privacy is not unconstitutional only if it was necessary to promote a compelling state interest (429 U.S. 589, 606-607, 51 L. ed. 2d 64, 77- 78).
- [87] Morfe v. Mutuc, *supra*, at 444-445 citing Emerson, "Nine Justices in Search of a Doctrine," 64 Michigan Law Review 219, 229 [1965].
- [88] See Shils, "Privacy: Its Constitution and Vicissitudes," Law and Contemporary Problems, vol. 31, pp. 301-303 [1966].
- [89] Harry Kalvin, Jr., "The Problems of Privacy in the Year 2000," Daedalus, vol. 96, pp. 876-879 [1967].

DISSENTING OPINION

KAPUNAN, J.:

The pioneering efforts of the executive to adopt a national computerized identification reference system has met fierce opposition. It has spun dark predictions of sinister government ploys to tamper with the citizen's right to privacy and ominous forecasts of a return to authoritarianism. Lost in the uproar, however, is the simple fact that there is nothing in the whole breadth and length of Administrative Order No. 308 that suggests a taint of constitutional infirmity.

A.O. No. 308 issued by President Fidel V. Ramos on 12 December 1996 reads:

ADMINISTRATIVE ORDER NO. 308 ADOPTION OF A NATIONAL COMPUTERIZED IDENTIFICATION REFERENCE SYSTEM

WHEREAS, there is a need to provide Filipino citizens and foreign residents with the facility to conveniently transact business with basic services and social security providers and other government instrumentalities;

WHEREAS, this will require a computerized system to properly and efficiently identify persons seeking basic services and social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations;

WHEREAS, a concerted and collaborative effort among the various basic services and social security providing agencies and other government instrumentalities is required to achieve such a system;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby direct the following:

SECTION 1. Establishment of a National Computerized Identification Reference System. A decentralized Identification Reference System among the key basic services and social security providers is hereby established.

SEC. 2. Inter-Agency Coordinating Committee. An Inter-Agency Coordinating Committee (IACC) to draw-up the implementing guidelines and oversee the implementation of the System is hereby created, chaired by the Executive Secretary, with the following as members:

Head, Presidential Management Staff
Secretary, National Economic Development Authority
Secretary, Department of the Interior and Local Government
Secretary, Department of Health
Administrator, Government Service Insurance System
Administrator, Social Security System
Administrator, National Statistics Office
Managing Director, National Computer Center

SEC. 3. Secretariat. The National Computer Center (NCC) is hereby designated as secretariat to the IACC and as such shall provide administrative and technical support to the IACC.

SEC. 4. Linkage Among Agencies. The Population Reference Number (PRN) generated by the NSO shall serve as the common reference number to establish a linkage among concerned agencies. The IACC Secretariat shall coordinate with the different Social Security and Services Agencies to establish the standards in the use of Biometrics Technology and in computer application designs of their respective systems.

Sec. 5. Conduct of Information Dissemination Campaign. The Office of the Press Secretary, in coordination with the National Statistics Office, the GSIS and SSS as lead agencies and other concerned agencies shall undertake a massive tri-media information dissemination campaign to educate and raise public awareness of the importance and use of the PRN and the Social Security Identification Reference.

SEC. 6. Funding. The funds necessary for the implementation of the system shall be sourced from the respective budgets of the concerned agencies.

SEC. 7. Submission of Regular Reports. The NSO, GSIS and SSS shall submit regular reports to the Office of the President, through the IACC, on the status of implementation of this undertaking.

SEC. 8. Effectivity. This Administrative Order shall take effect immediately.

DONE in the City of Manila, this 12th day of December in the year of Our Lord, Nineteen Hundred and Ninety-Six.

In seeking to strike down A.O. No. 308 as unconstitutional, petitioner argues:

A. THE ESTABLISHMENT OF A NATIONAL COMPUTERIZED IDENTIFICATION REFERENCE SYSTEM REQUIRES A LEGISLATIVE ACT. THE ISSUANCE OF A.O. NO. 308 BY THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES IS, THEREFORE, AN UNCONSTITUTIONAL USURPATION OF THE LEGISLATIVE POWERS OF THE CONGRESS OF THE REPUBLIC OF THE PHILIPPINES.

B. THE APPROPRIATION OF PUBLIC FUNDS BY THE PRESIDENT FOR THE IMPLEMENTATION OF A.O. NO. 308 IS AN UNCONSTITUTIONAL USURPATION OF THE EXCLUSIVE RIGHT OF CONGRESS TO APPROPRIATE PUBLIC FUNDS FOR EXPENDITURE.

C. THE IMPLEMENTATION OF A.O. NO. 308 INSIDIOUSLY LAYS THE GROUNDWORK FOR A SYSTEM WHICH WILL VIOLATE THE BILL OF RIGHTS ENSHRINED IN THE CONSTITUTION.

The National Computerized Identification Reference System, to which the NSO, GSIS and SSS are linked as lead members of the IACC is intended to establish uniform standards for ID cards issued by key government agencies (like the SSS)[1] for the “efficient identification of persons.”[2] Under the new system, only one reliable and tamper-proof I.D. need be presented by the cardholder instead of several identification papers such as passports and driver’s license,[3] to able to transact with government agencies. The improved ID can be used to facilitate public transactions such as:

1. Payment of SSS and GSIS benefits
2. Applications for driver’s license, BIR TIN, passport, marriage license, death certificate, NBI and police clearances, and business permits
3. Availment of Medicare Services in hospitals
4. Availment of welfare services
5. Application for work/employment
6. Pre-requisite for voter’s ID.[4]

The card may also be used for private transactions such as:

1. Opening of bank accounts
2. Encashment of checks
3. Applications for loans, credit cards, water, power, telephones, pagers, etc.
4. Purchase of stocks
5. Application for work/employment
6. Insurance claims
7. Receipt of payments, checks, letters, valuables, etc.[5]

The new identification system would tremendously improve and uplift public service in our country to the benefit of Filipino citizens and resident aliens. It would promote, facilitate and speed up legitimate transactions with government offices as well as with private and business entities. Experience tells us of the constant delays and inconveniences the public has to suffer in availing of basic public services and social security benefits because of inefficient and not too reliable means of identification of the beneficiaries.

Thus, in the “Primer on the Social Security Card and Administrative Order No. 308” issued by the SSS, a lead agency in the implementation of the said order, the following salient features are mentioned:

1. A.O. 308 merely establishes the standards for I.D. cards issued by key government agencies such as SSS and GSIS.
2. It does not establish a national I.D. system; neither does it require a national I.D. card for every person.
3. The use of the I.D. is voluntary.
4. The I.D. is not required for delivery of any government service. Everyone has the right to basic government services as long as he is qualified under existing laws.
5. The I.D. cannot and will not in any way to be used to prevent one to travel.
6. There will be no discrimination. Non-holders of the improved I.D. are still entitled to the same services but will be subjected to the usual rigid identification and verification beforehand.

I.

The issue that must first be hurdle is: was the issuance of A.O. No. 308 an exercise by the President of legislative power properly belonging to Congress?

It is not.

The Administrative Code of 1987 has unequivocally vested the President with quasi-legislative powers in the form of executive orders, administrative orders, proclamations, memorandum orders and circulars and general or special orders.[6] An administrative order, like the one under which the new identification system is embodied, has its peculiar meaning under the 1987 Administrative Code:

SEC. 3. Administrative Orders.--Acts of the President which relate to particular aspects of governmental operations in pursuance of his duties as administrative head shall be promulgated in administrative orders.

The National Computerized Identification Reference System was established pursuant to the aforementioned provision precisely because its principal purpose, as expressly stated in the order, is to provide the people with "the facility to conveniently transact business" with the various government agencies providing basic services. Being the "administrative head," it is unquestionably the responsibility of the President to find ways and means to improve the government bureaucracy, and make it more professional, efficient and reliable, specially those government agencies and instrumentalities which provide basic services and which the citizenry constantly transact with, like the Government Service Insurance System (GSIS), Social Security System (SSS) and National Statistics Office (NSO). The national computerized ID system is one such advancement. To emphasize, the new identification reference system is created to streamline the bureaucracy, cut the red tape and ultimately achieve administrative efficiency. The project, therefore, relates to, is an appropriate subject and falls squarely within the ambit of the Chief Executive's administrative power under which, in order to successfully carry out his administrative duties, he has been granted by law quasi-legislative powers, quoted above.

Understandably, strict adherence to the doctrine of separation of powers spawns differences of opinion. For we cannot divide the branches of government into water-tight compartments. Even if such is possible, it is neither desirable nor feasible. Bernard Schwartz, in his work *Administrative Law, A Casebook*, thus states:

To be sure, if we think of the separation of powers as carrying out the distinction between legislation and administration with mathematical precision and as dividing the branches of government into watertight compartments, we would probably have to conclude that any exercise of lawmaking authority by an agency is automatically invalid. Such a rigorous application of the constitutional doctrine is neither desirable nor feasible; the only absolute separation that has ever been possible was that in the theoretical writings of a Montesquieu, who looked across at foggy England from his sunny Gascon vineyards and completely misconstrued what he saw.[7]

A mingling of powers among the three branches of government is not a novel concept. This blending of powers has become unnecessary to properly address the complexities brought about by a rapidly developing society and which the traditional branches of government have difficulty coping with.[8]

It has been said that:

The true meaning of the general doctrine of the separation of powers seems to be that the whole power of one department should not be exercised by the same hands which possess the whole power of either of the other departments, and that no one department ought to possess directly or indirectly an overruling influence over the others. And it has been held that this doctrine should be applied only to the powers which because of their nature are assigned by the constitution itself to one of the departments exclusively. Hence, it does not necessarily follow that an entire and complete separation is either desirable or was ever intended, for such a complete separation would be impracticable if not impossible; there may be- and frequently are- areas in which executive, legislative, and judicial powers blend or overlap; and many officers whose duties cannot be exclusively placed under any of these heads.

The courts have perceived the necessity of avoiding a narrow construction of a state constitutional provision for the division of the powers of the government into three distinct departments, for it is impractical to view the provision from the standpoint of a doctrinaire. Thus, the modern view of separation of powers rejects the metaphysical abstractions and reverts instead to a more pragmatic, flexible, functional approach, giving recognition to the fact that there may be a certain degree of blending or admixture of the three powers of the government. Moreover, the doctrine of separation of powers has never been strictly or rigidly applied, and indeed could not be, to all the ramifications of state or national governments; government would prove abortive if it were attempted to follow the policy of separation to the letter.[9]

In any case, A.O. No. 308 was promulgated by the President pursuant to the quasi-legislative powers expressly granted to him by law and in accordance with his duty as administrative head. Hence, the contention that the President usurped the legislative prerogatives of Congress has no firm basis.

II

Having resolved that the President has the authority and prerogative to issue A.O. No. 308, I submit that it is premature for the Court to determine the constitutionality or unconstitutionality of the National Computerized Identification Reference System.

Basic in constitutional law is the rule that before the court assumes jurisdiction over and decide constitutional issues, the following requisites must first be satisfied:

- 1) there must be an actual case or controversy involving a conflict of rights susceptible of judicial determination;
- 2) the constitutional question must be raised by a proper party;
- 3) the constitutional question must be raised at the earliest opportunity; and
- 4) the resolution of the constitutional question must be necessary to the resolution of the case.[10]

In this case, it is evident that the first element is missing. Judicial intervention calls for an actual case or controversy which is defined as “an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory.”[11] Justice Isagani A. Cruz further expounds that “(a) justifiable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character or from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of special relief through a decree that is conclusive in character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts....”[12] A.O. No. 308 does not create any concrete or substantial controversy. It provides the general framework of the National Computerized Identification Reference System and lays down the basic standards (efficiency, convenience and prevention of fraudulent transactions) for its creation. But as manifestly indicated in the subject order, it is the Inter-Agency Coordinating Committee (IACC) which is tasked to research, study and formulate the guidelines and parameters for the use of Biometrics Technology and in computer application designs that will define and give substance to the new system.[13] This petition is, thus, premature considering that the IACC is still in the process of doing the leg work and has yet to codify and formalize the details of the new system.

The majority opines that the petition is ripe for adjudication even without the promulgation of the necessary guidelines in view of the fact that respondents have begun implementation of A.O. No. 308. The SSS, in particular, has started advertising in newspapers the invitation to bid for the production of the I.D. cards.[14]

I beg to disagree. It is not the new system itself that is intended to be implemented in the invitation to bid but only the manufacture of the I.D. cards. Biometrics Technology is not and cannot be used in the I.D. cards as no

guidelines therefor have yet been laid down by the IACC. Before the assailed system can be set up, it is imperative that the guidelines be issued first.

III

Without the essential guidelines, the principal contention for invalidating the new identification reference system -- that it is an impermissible encroachment on the constitutionally recognized right to privacy -- is plainly groundless. There is nothing in A.O. No. 308 to serve as sufficient basis for a conclusion that the new system to be evolved violates the right to privacy. Said order simply provides the system's general framework. Without the concomitant guidelines, which would spell out in detail how this new identification system would work, the perceived violation of the right to privacy amounts to nothing more than mere surmise or speculation.

What has caused much of the hysteria over the National Computerized Identification Reference System is the possible utilization of Biometrics Technology which refers to the use of automated matching of physiological or behavioral characteristics to identify a person that would violated the citizen's constitutionally protected right to privacy.

The majority opinion has enumerated various forms and methods of Biometrics Technology which if adopted in the National Computerized Identification Reference System would seriously threaten the right to privacy. Among which are biocrypt, retinal scan, artificial nose and thermogram. The majority also points to certain alleged deficiencies of A.O. No. 308. Thus:

- 1) A.O. No. 308 does not specify the particular Biometrics Technology that shall be used for the new identification system;
- 2) The order does not state whether encoding of data is limited to biological information alone for identification purposes;
- 3) There is no provision as to who shall control and access the data, under what circumstances and for what purpose; and
- 4) There are no controls to guard against leakage of information, thus heightening the potential for misuse and abuse.

We should not be overwhelmed by the mere mention of the Biometrics Technology and its alleged, yet unfounded "far-reaching effects."

There is nothing in A.O. No. 308, as it is worded, to suggest that the advanced methods of the Biometrics Technology that may pose danger to the right of privacy will be adopted.

The standards set in A.O. No. 308 for the adoption of the new system are clear-cut and unequivocally spelled out in the "WHEREASES" and body of the order, namely, the need to provide citizens and foreign residents with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities ; the computerized system is intended to properly and efficiently identify persons seeking basic services or social security and reduce, if not totally eradicate fraudulent transactions and misrepresentation; the national identification reference system is established among the key basic services and social security providers; and finally, the IACC Secretariat shall coordinate with different Social Security and Services Agencies to establish the standards in the use of Biometrics Technology. Consequently, the choice of the particular form and extent of Biometrics Technology that will be applied and the parameters for its use (as will be defined in the guidelines) will necessarily and locally be guided, limited and circumscribed by the afore-stated standards. The fear entertained by the majority on the potential dangers of this new technology is thus securely allayed by the specific limitations set by the above-mentioned standards. More than this, the right to privacy is well-ensconced in and directly protected by various provisions of the Bill of Rights, the Civil Code, the Revised Penal Code, and

certain special laws, all so painstakingly and resourcefully catalogued in the majority opinion. Many of these laws provide penalties for their violation in the form of imprisonment, fines, or damages. These laws will serve as powerful deterrents not only in the establishment of any administrative rule that will violate the constitutionally protected right to privacy, but also to would-be transgressors of such right.

Relevant to this case is the ruling of the U.S. Supreme Court in *Whalen v. Roe*.^[15] In that case, a New York statute was challenged for requiring physicians to identify patients obtaining prescription drugs of the statute's "Schedule II" category (a class of drugs having a potential for abuse and a recognized medical use) so the names and addresses of the prescription drug patients can be recorded in a centralized computer file maintained by the New York State Department of Health. Some patients regularly receiving prescription for "Schedule II" drugs and doctors who prescribed such drugs brought an action questioning the validity of the statute on the ground that it violated the plaintiff's constitutionally protected rights of privacy.

In a unanimous decision, the US Supreme Court sustained the validity of the statute on the ground that the patient identification requirement is a reasonable exercise of the State's broad police powers. The Court also held that there is no support in the record for an assumption that the security provisions of the statute will be administered improperly. Finally, the Court opined that the remote possibility that judicial supervision of the evidentiary use of particular items of stored information will not provide adequate protection against unwarranted disclosures is not a sufficient reason for invalidating the patient-identification program.

To be sure, there is always a possibility of an unwarranted disclosure of confidential matters enormously accumulated in computerized data banks and in government records relating to taxes, public health, social security benefits, military affairs, and similar matters. But as previously pointed out, we have a sufficient number of laws prohibiting and punishing any such unwarranted disclosures. Anent this matter, the observation in *Whalen vs. Roe* is instructive:

x x x. We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our Armed Forces and the enforcement of the criminal laws all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed. The right to collect and use such data for public purposes is typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures. x x x^[16]

The majority laments that as technology advances, the level of reasonably expected privacy decreases. That may be true. However, courts should tread daintily on the field of social and economic experimentation lest they impede or obstruct the march of technology to improve public services just on the basis of an unfounded fear that the experimentation violates one's constitutionally protected rights. In the sobering words of Mr. Justice Brandeis:

To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious or unreasonable. We have power to do this, because the due process clause has been held by the Court applicable to matters of substantive law as well as to matters of procedure. But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we

must let out minds to be bold.[17]

Again, the concerns of the majority are premature precisely because there are as yet no guidelines that will direct the Court and serve as solid basis for determining the constitutionality of the new identification system. The Court cannot and should not anticipate the constitutional issues and rule on the basis of guesswork. The guidelines would, among others, determine the particular biometrics method that would be used and the specific personal data that would be collected, provide the safeguards (if any) and supply the details on how this new system is supposed to work. The Court should not jump the gun on the Executive.

III

On the Issue of funding, the majority submits that Section 6 of A.O. No. 308, which allows the government agencies included in the new system to obtain funding from their respective budgets, is unconstitutional for being an illegal transfer of appropriations.

It is not so. The budget for the national identification system cannot be deemed a transfer of funds since the same is composed of and will be implemented by the member government agencies. Moreover, these agencies particularly the GSIS and SSS have been issuing some form of identification or membership card. The improved ID cards that will be issued under this new system would just take place of the old identification cards and budget-wise, the funds that were being used to manufacture the old ID cards, which are usually accounted for under the "Supplies and Materials" item of the Government Accounting and Auditing Manual, could now be utilized to fund the new cards. Hence, what is envisioned is not a transfer of appropriations but a pooling of funds and resources by the various government agencies involved in the project.

WHEREFORE, I vote to dismiss the petition.

[1] SSS, Primer on the Social Security Card & A.O. No. 308, p. 1.

[2] *Id.*, at 2.

[3] *Ibid.*

[4] *Ibid.*

[5] *Id.*, at 3.

[6] Secs. 2 to 7, Chapter 2, Title I, Book III of the Administrative Code of 1987.

[7] Schwartz, Bernard, *Administrative Law, a Casebook*, Fourth Edition 1994, pp. 78-79.

[8] Carlo Cruz, *Philippine Administrative Law*, 1991 ed., pp. 1-3.

[9] 16 Am. Jur. 2d, *Constitutional Law*, Sec. 299. Underscoring supplied.

[10] *Board of Optometry v. Colet*, 260 SCRA 88 (1996).

[11] *Ibid.*

[12] Isagani A. Cruz, *Philippine Political Law*, 1991 ed., p. 235.

[13] Sec. 2, A.O. No. 308.

[14] Annex E, Petition.

[15] 429 US 589 (1977).

[16] *Id.*, at 77.

[17] *New State Ice Co. v. Liebmann*, 285 US 262 (Dissenting Opinion) cited in *Whalen v. Roe*, 249 US 589.

SEPARATE OPINION

MENDOZA, J., dissenting:

My vote is to dismiss the petition in this case.

First. I cannot find anything in the text of Administrative Order No. 308 of the President of the Philippines that would warrant a declaration that it is violative of the right of privacy. So far as I can see, all the Administrative Order does is

- establish an Identification Reference System involving the following service agencies of the government:
 - ° Presidential Management Staff
 - ° National Economic Development Authority
 - ° Department of the Interior and Local Government
 - ° Department of Health
 - ° Government Service Insurance System
 - ° Social Security System
 - ° National Statistics Office
 - ° National Computer Center
- create a committee, composed of the heads of the agencies concerned, to draft rules for the System;
- direct the use of the Population Reference Number (PRN) generated by the National Census and Statistics Office as the common reference number to link the participating agencies into an Identification Reference System, and the adoption by the agencies of standards in the use of biometrics technology and computer designs; and
- provide for the funding of the System from the budgets of the agencies concerned.

Petitioner argues, however, that “the implementation of A.O. No. 308 will mean that each and every Filipino and resident will have a file with the government containing, at the very least, his PRN and physiological biometrics such as, but not limited to, his facial features, hand geometry, retinal or iris pattern, DNA pattern, fingerprints, voice characteristics, and signature analysis.”

In support of his contention, petitioner quotes the following publication surfed from the Internet:

The use of biometrics is the means by which an individual may be conclusively identified. There are two types of biometric identifiers: Physical and behavioral characteristics. Physiological biometrics include facial features, hand geometry, retinal and iris patterns, DNA, and fingerprints. Behavioral characteristics include voice characteristics and signature analysis.[1]

I do not see how from the bare provisions of the Order, the full text of which is set forth in the majority opinion, petitioner and the majority can conclude that the Identification Reference System establishes such comprehensive

personal information dossiers that can destroy individual privacy. So far as the Order provides, all that is contemplated is an identification system based on data which the government agencies involved have already been requiring individuals making use of their services to give.

For example, under C.A. No. 591, §2(a) the National Statistics Office collects “by enumeration, sampling or other methods, statistics and other information concerning population . . . social and economic institutions, and such other statistics as the President may direct.” In addition, it is in charge of the administration of the Civil Register,[2] which means that it keeps records of information concerning the civil status of persons, i.e., (a) births, (b) deaths, (c) marriages and their annulments; (d) legitimations, (e) adoptions, (f) acknowledgments of natural children, (g) naturalizations, and (h) changes of name.[3]

Other statutes giving government agencies the power to require personal information may be cited. R.A. No. 4136, §23 gives the Land Transportation Office the power to require applicants for a driver’s license to give information regarding the following: their full names, date of birth, height, weight, sex, color of eyes, blood type, address, and right thumbprint;[4] while R.A. No. 8239, §5 gives the Department of Foreign Affairs the power to require passport applicants to give information concerning their names, place of birth, date of birth, religious affiliation, marital status, and citizenship.

Justice Romero, tracing the origin of privacy to the attempt of the first man and woman to cover their nakedness with fig leaves, bemoans the fact that technology and institutional pressures have threatened our sense of privacy. On the other hand, the majority would have none of the Identification Reference System “to prevent the shrinking of the right to privacy, once regarded as ‘the most comprehensive of rights and the right most valued by civilized men.’”[5] Indeed, techniques such as fingerprinting or electronic photography in banks have become commonplace. As has been observed, the teaching hospital has come to be accepted as offering medical services that compensate for the loss of the isolation of the sickbed; the increased capacity of applied sciences to utilize more and more kinds of data and the consequent calls for such data have weakened traditional resistance to disclosure. As the area of relevance, political or scientific, expands, there is strong psychological pressure to yield some ground of privacy.[6]

But this is a fact of life to which we must adjust, as long as the intrusion into the domain of privacy is reasonable. In *Morfe v. Mutuc*,[7] this Court dealt the coup de grace to claims of latitudinarian scope for the right of privacy by quoting the pungent remark of an acute observer of the social scene, Carmen Guerrero-Nakpil:

Privacy? What’s that? There is no precise word for it in Filipino, and as far as I know any Filipino dialect and there is none because there is no need for it. The concept and practice of privacy are missing from conventional Filipino life. The Filipino believes that privacy is an unnecessary imposition, an eccentricity that is barely pardonable or, at best, an esoteric Western afterthought smacking of legal trickery.[8]

Justice Romero herself says in her separate opinion that the word privacy is not even in the lexicon of Filipinos.

As to whether the right of privacy is “the most valued right,” we do well to remember the encomiums paid as well to other constitutional rights. For Professor Zechariah Chafee, “The writ of habeas corpus is ‘the most important human rights provision in the fundamental law.’”[9] For Justice Cardozo, on the other hand, freedom of expression “is the matrix, the indispensable condition, of nearly every other form of freedom.”[10]

The point is that care must be taken in assigning values to constitutional rights for the purpose of calibrating them on the judicial scale, especially if this means employing stricter standards of review for regulations alleged to infringe certain rights deemed to be “most valued by civilized men.”

Indeed, the majority concedes that “the right of privacy does not bar all incursions into individual privacy. . .

[only that such] incursions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions.”[11] In the case of the Identification Reference System, the purpose is to facilitate the transaction of business with service agencies of the government and to prevent fraud and misrepresentation. The personal identification of an individual can facilitate his treatment in any government hospital in case of emergency. On the other hand, the delivery of material assistance, such as free medicines, can be protected from fraud or misrepresentation as the absence of a data base makes it possible for unscrupulous individuals to obtain assistance from more than one government agency.

Second. Thus, the issue in this case is not really whether A.O. No. 308 violates the right of privacy formed by emanations from the several constitutional rights cited by the majority.[12] The question is whether it violates freedom of thought and of conscience guaranteed in the following provisions of our Bill of Rights (Art. III):

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

SEC. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever be allowed. No religious test shall be required for the exercise of civil or political rights.

More specifically, the question is whether the establishment of the Identification Reference System will not result in the compilation of massive dossiers on individuals which, beyond their use for identification, can become instruments of thought control. So far, the text of A.O. No. 308 affords no basis for believing that the data gathered can be used for such sinister purpose. As already stated, nothing that is not already being required by the concerned agencies of those making use of their services is required by the Order in question. The Order simply organizes service agencies of the government into a System for the purpose of facilitating the identification of persons seeking basic services and social security. Thus, the whereas clauses of A.O. No. 308 state:

WHEREAS, there is a need to provide Filipino citizens and foreign residents with the facility to conveniently transact business with basic services and social security providers and other government instrumentalities;

WHEREAS, this will require a computerized system to properly and efficiently identify persons seeking basic services and social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations;

WHEREAS, a concerted and collaborative effort among the various basic services and social security providing agencies and other government instrumentalities is required to achieve such a system;

The application of biometric technology and the standardization of computer designs can provide service agencies with precise identification of individuals, but what is wrong with that?

Indeed, A.O. No. 308 is no more than a directive to government agencies which the President of the Philippines has issued in his capacity as administrative head.[13] It is not a statute. It confers no right; it imposes no duty; it affords no protection; it creates no office.[14] It is, as its name indicates, a mere administrative order, the precise nature of which is given in the following excerpt from the decision in the early case of *Olsen & Co. v. Herstein*:^[15]

[It] is nothing more or less than a command from a superior to an inferior. It creates no relation except between the official who issues it and the official who receives it. Such orders, whether executive or departmental, have for their object simply the efficient and economical administration of the affairs of the department to which or in which they are issued in accordance with the law governing the subject-matter. They are administrative in their nature and do not pass beyond the limits of the department to which they are directed or in which they are published, and, therefore, create no rights in third persons. They are based on, and are the product of, a relationship in which power is their source and obedience their object. Disobedience to or deviation from such

an order can be punished only by the power which issued it; and, if that power fails to administer the corrective, then the disobedience goes unpunished. In that relationship no third person or official may intervene, not even the courts. Such orders may be very temporary, they being subject to instant revocation or modification by the power which published them. Their very nature, as determined by the relationship which produced them, demonstrates clearly the impossibility of any other person enforcing them except the one who created them. An attempt on the part of the courts to enforce such orders would result not only in confusion but, substantially, in departmental anarchy also.[16]

Third. There is no basis for believing that, beyond the identification of individuals, the System will be used for illegal purposes. Nor are sanctions lacking for the unauthorized use or disclosure of information gathered by the various agencies constituting the System. For example, as the Solicitor General points out, C.A. No. 591, §4 penalizes the unauthorized use or disclosure of data furnished the NSO with a fine of not more than P600.00 or imprisonment for not more than six months or both.

At all events, at this stage, it is premature to pass on the claim that the Identification Reference System can be used for the purpose of compiling massive dossiers on individuals that can be used to curtail basic civil and political rights since, if at all, this can only be provided in the implementing rules and regulations which have yet to be promulgated. We have already stated that A.O. No. 308 is not a statute. Even in the case of statutes, however, where implementing rules are necessary to put them into effect, it has been held that an attack on their constitutionality would be premature.[17] As Edgar in *King Lear* puts it, “Ripeness is all.”[18] For, to borrow some more Shakespearean lines,

The canker galls the infants of the spring
Too oft before their buttons be disclos’d.[19]

That, more than any doctrine of constitutional law I can think of, succinctly expresses the rule on ripeness, prematurity, and hypothetical, speculative, or conjectural claims.

Of special relevance to this case is *Laird v. Tatum*. [20] There, a class suit was brought seeking declaratory and injunctive relief on the claim that a U.S. Army intelligence surveillance of civilian political activity having “a potential for civil disorder” exercised “a present inhibiting effect on [respondents’] full expression and utilization of their First Amendment rights.” In holding the case nonjusticiable, the U.S. Supreme Court, in an opinion by Chief Justice Burger, said:[21]

In recent years this Court has found in a number of cases that constitutional violations may arise from the deterrent, or “chilling,” effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights. [Citation of cases omitted] In none of these cases, however, did the chilling effect arise merely from the individual’s knowledge that a governmental agency was engaged in certain activities or from the individual’s concomitant fear that, armed with the fruits of those activities, the agency might in the future take some other and additional action detrimental to that individual. Rather, in each of these cases, the challenged exercise of governmental power was regulatory, proscriptive, or compulsory in nature, and the complainant was either presently or prospectively subject to the regulations, proscriptions, or compulsions that he was challenging. . . .

[T]hese decisions have in no way eroded the “established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he was sustained or is immediately in danger of sustaining a direct injury as the result of that action. . . .”

The respondents do not meet this test; [the] alleged “chilling” effect may perhaps be seen as arising from respondents’ perception of the system as inappropriate to the Army’s role under our form of government, or as

arising from respondents' beliefs that it is inherently dangerous for the military to be concerned with activities in the civilian sector, or as arising from respondents' less generalized yet speculative apprehensiveness that the Army may at some future date misuse the information in some way that would cause direct harm to respondents. Allegations of a subjective "chill" are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm; "the federal courts established pursuant to Article III of the Constitution do not render advisory opinions." *United Public Workers v. Mitchell*, 330 US 75, 89, 91 L Ed 754, 766, 67 S Ct 556 (1947).

Fourth. Given the fact that no right of privacy is involved in this case and that any objection to the Identification Reference System on the ground that it violates freedom of thought is premature, speculative, or conjectural pending the issuance of the implementing rules, it is clear that petitioner Blas F. Ople has no cause of action and, therefore, no standing to bring this action. Indeed, although he assails A.O. No. 308 on the ground that it violates the right of privacy, he claims no personal injury suffered as a result of the Order in question. Instead, he says he is bringing this action as taxpayer, Senator, and member of the Government Service Insurance System.

Insofar as petitioner claims an interest as taxpayer, it is sufficient to say that A.O. No. 308 does not involve the exercise of the taxing or spending power of the government.

Insofar as he purports to sue as a member of the GSIS, neither does petitioner have an interest sufficient to enable him to litigate a constitutional question. Petitioner claims that in providing that the funds necessary for implementing the System shall be taken from the budgets of the concerned agencies, A.O. No. 308 violates Art. VI, §25(5) which provides:

No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

But, as the Solicitor General states:

Petitioner's argument is anchored on two erroneous assumptions: one, that all the concerned agencies, including the SSS and the GSIS, receive budgetary support from the national government; and two, that the GAA is the only law whereby public funds are appropriated. Both assumptions are wrong.

The SSS and GSIS do not presently receive budgetary support from the National Government. They have achieved self-supporting status such that the contributions of their members are sufficient to finance their expenses. One would be hard pressed to find in the GAA an appropriation of funds to the SSS and the GSIS.

Furthermore, their respective charters authorize the SSS and the GSIS to disburse their funds (Rep. Act No. 1161 [1954], as amended, Sec. 25; Pres. Decree No. 1146 [1977], as amended, Sec. 29) without the need for a separate appropriation from the Congress.

Nor as Senator can petitioner claim standing since no power of Congress is alleged to have been impaired by the Administrative Order in question.^[22] As already stated, in issuing A.O. No. 308, the President did not exercise the legislative power vested by the Constitution in Congress. He acted on the basis of his own powers as administrative head of the government, as distinguished from his capacity as the Executive. Dean Sinco elucidates the crucial distinction thus:

The Constitution of the Philippines makes the President not only the executive but also the administrative head of the government. . . . Executive power refers to the legal and political function of the President involving the

exercise of discretion. Administrative power, on the other hand, concerns itself with the work of applying policies and enforcing orders as determined by proper governmental organs. These two functions are often confused by the public; but they are distinct from each other. The President as the executive authority has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. As administrative head, his duty is to see that every government office is managed and maintained properly by the persons in charge of it in accordance with pertinent laws and regulations.

. . . The power of control vested in him by the Constitution makes for a strongly centralized administrative system. It reinforces further his position as the executive of the government, enabling him to comply more effectively with his constitutional duty to enforce the laws. It enables him to fix a uniform standard of administrative efficiency and to check the official conduct of his agents. The decisions of all the officers within his department are subject to his power of revision, either on his own motion or on the appeal of some individual who might deem himself aggrieved by the action of an administrative official. In case of serious dereliction of duty, he may suspend or remove the officials concerned.[23]

For the foregoing reasons, the petition should be DISMISSED.

[1] “Congress Poised To Mandate Government Registration and Tracking of All Americans,” Privacy International. February 1996; IDCARD.HTM at (emphasis by petitioner).

[2] C.A. No. 591, §1(f).

[3] Act No. 3753, §1.

[4] R.A. No. 4136, §23.

[5] Dissenting Opinion of Justice Brandeis in *Olmstead v. United States*, 438, 478 (1928).

[6] Paul A. Freund, *Privacy: One Concept or Many*, in *Privacy* 188 (R. Pennock and J. Chapman, eds., 1971).

[7] 22 SCRA 424 (1968).

[8] *Id.*, at 445, n. 66.

[9] Zechariah Chafee, *The Most Important Human Right in the Constitution*, 32 *Boston Univ. Law Rev.* 143 (1947), quoted in *Gumabon v. Director of Prisons*, 37 SCRA 420, 423 (1971) (per Fernando, J.).

[10] *Palko v. Connecticut*, 302 U.S. 319, 327, 82 L.Ed. 288, 293 (1937).

[11] Majority Opinion, pp. 30-31.

[12] The majority cites Art. III, §§1, 2, 6, 8, and 17 of the Constitution.

[13] Administrative Code of 1987, Bk III, Tit I, Ch. I, §3 provides:

SEC. 3. Administrative Orders. - Acts of the President which relate to particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders.

[14] See *Norton v. Shelby County*, 118 U.S. 425, 442, 30 L.Ed. 178, 186 (1886).

[15] 32 Phil. 520 (1915) (emphasis added).

[16] *Id.*, at 532.

[17] *Garcia v. Executive Secretary*, 204 SCRA 516 (1991).

[18] *King Lear*, Act V, Sc. ii, line 9.

[19] *Hamlet*, Act I, Sc. iii, lines 41-42.

[20] 408 U.S. 1, 33 L.Ed.2d 154 (1972).

[21] *Id.*, 408 U.S. at 13-14, 33 L.Ed.2d at 163-164.

[22] *Philconsa v. Enriquez*, 235 SCRA 506 (1994); *Gonzales v. Macaraig*, 191 SCRA 452 (1990); *Raines v. Byrd*, No. 96-1671, June 26, 1997 (Legislators whose votes have been sufficient to defeat (or enact) a specific legislative act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.”)

[23] *Vicente G. Sinco*, *Philippine Political Law* 234-235 (11th ed., 1962) (emphasis added).

SEPARATE OPINION

PANGANIBAN, J.:

I concur only in the result and only on the ground that an executive issuance is not legally sufficient to establish an all-encompassing computerized system of identification in the country. The subject matter contained in AO 308 is beyond the powers of the President to regulate without a legislative enactment.

I reserve judgment on the issue of whether a national ID system is an infringement of the constitutional right to privacy or of the freedom of thought until after Congress passes, if ever, a law to this effect. Only then, and upon the filing of a proper petition, may the provisions of the statute be scrutinized by the judiciary to determine their constitutional foundation. Until such time, the issue is premature; and any decision thereon, speculative and academic.[1]

Be that as it may, the scholarly discussions of Justices Romero, Puno, Kapunan and Mendoza on the constitutional right to privacy and freedom of thought may still become useful guides to our lawmakers, when and if Congress should deliberate on a bill establishing a national identification system.

Let it be noted that this Court, as shown by the voting of the justices, has not definitively ruled on these points. The voting is decisive only on the need for the appropriate legislation, and it is only on this ground that the petition is granted by this Court.

[1] Basic is the doctrine that constitutional issues should not be used to decide a controversy, if there are other available grounds, as in this case. (See Justice Isagani Cruz, *Constitutional Law*, 1995 ed., pp. 29-31.)

SEPARATE OPINION

ROMERO, J.:

What marks off a man from a beast?

Aside from the distinguishing physical characteristics, man is a rational being, one who is endowed with intellect which allows him to apply reasoned judgment to problems at hand; he has the innate spiritual faculty which can tell, not only what is right but, as well, what is moral and ethical. Because of his sensibilities, emotions and feelings, he likewise possesses a sense of shame. In varying degrees as dictated by diverse cultures, he erects a

wall between himself and the outside world wherein he can retreat in solitude, protecting himself from prying eyes and ears and their extensions, whether from individuals, or much later, from authoritarian intrusions.

Piercing through the mists of time, we find the original Man and Woman defying the injunction of God by eating of the forbidden fruit in the Garden. And when their eyes were "opened," forthwith "they sewed fig leaves together, and made themselves aprons." [1] Down the corridors of time, we find man fashioning "fig leaves" of sorts or setting up figurative walls, the better to insulate themselves from the rest of humanity.

Such vague stirrings of the desire "to be left alone," considered "anti-social" by some, led to the development of the concept of the "privacy," unheard of among beasts. Different branches of science, have made their own studies of this craving of the human spirit - psychological, anthropological, sociological and philosophical, with the legal finally giving its imprimatur by elevating it to the status of right, specifically a private right.

Initially recognized as a aspect of tort law, it created giant waves in legal circles with the publication in the Harvard Law Review [2] of the trail-blazing article, "The Right to Privacy," by Samuel d. Warren and Louis D. Brandeis.

Whether viewed as a personal or a property right, it found its way in Philippine Constitutions and statutes; this, in spite of the fact that Philippine culture can hardly be said to provide a fertile field for the burgeoning of said right. In fact, or lexicographers have yet to coin a word for it in the Filipino language. Customs and practices, being what they have always been, Filipinos think it perfectly natural and in good taste to inquire into each other's intimate affairs.

One has only to sit through a televised talk show to be convinced that what passes for wholesome entertainment is actually an invasion into one's private life, leaving the interviewee embarrassed and outraged by turns.

With the overarching influence of common law and the recent advent of the Information Age with its high-tech devices, the right to privacy has expanded to embrace its public law aspect. The Bill of Rights of our evolving Charters, a direct transplant from that of the United States, contains in essence facets of the right to privacy which constitute limitations on the far-reaching powers of government.

So terrifying are the possibilities of a law such as Administrative Order No. 308 in making inroads into the private lives of the citizens, a virtual Big Brother looking over our shoulders, that it must, without delay, be "slain upon sight" before our society turns totalitarian with each of us, a mindless robot.

I, therefore, VOTE for the nullification of A.O. No. 308.

[1] 3 Genesis 7.

[2] 4 Harvard Law Review, 193-220 (1890).

SEPARATE OPINION

VITUG, J.:

One can appreciate the concern expressed by my esteemed colleague, Mr. Justice Reynato S. Puno, echoing that of the petitioner, the Honorable Blas F. Ople, on the issuance of Administrative Order No. 308 by the President of the Philippines and the dangers its implementation could bring. I find it hard, nevertheless, to peremptorily assume at this time that the administrative order will be misused and to thereby ignore the possible benefits that can be derived from, or the merits of, a nationwide computerized identification reference system. The great strides

and swifts advances in technology render it inescapable that one day we will, at all events, have to face up with the reality of seeing extremely sophisticated methods of personal identification and any attempt to stop the inevitable may either be short-lived or even futile. The imperatives, I believes, would instead be to now install specific safeguards and control measures that may be calculated best to ward-off probable ill effects of any such device. Here, it may be apropos to recall the pronouncement of this Court in *People vs. Nazario*[1] that -

"As a rule, statute or [an] act may be said to be vague when it lacks comprehensible standards that men 'of common intelligence must necessarily guess at its meaning and differ as to its application.' It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of Government muscle." [2]

Administrative Order No. 308 appears to be so extensively drawn that could, indeed, allow unbridled options to become available to its implementors beyond the reasonable comfort of the citizens and of residents alike.

Prescinding from the foregoing, and most importantly to this instance, the subject covered by the questioned administrative order can have far-reaching consequences that can tell on all individuals, their liberty and privacy, that, to my mind, should make it indispensable and appropriate to have the matter specifically addressed by the Congress of the Philippines, the policy-making body of our government, to which the task should initially belong and to which the authority to formulate and promulgate that policy is constitutionally lodged.

WHEREFORE, I vote for the nullification of Administrative Order No. 308 for being an undue and impermissible exercise of legislative power by the Executive.

[1] 165 SCRA 186.

[2] At p. 195.

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