G.R. No. 246816 – ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC. (ANGKLA), and SERBIYSO SA BAYAN PARTY (SBP), *Petitioners v.* **COMMISSION ON ELECTIONS (sitting as the National Board of Canvassers), CHAIRMAN SHERIFF M. ABAS, COMMISSIONER AL A. PARREÑO, COMMISSIONER LUIE TITO F. GUIA, COMMISSIONER MA. ROWENA AMELIA V. GUANZON, COMMISSIONER SOCCORRO B. INTING, COMMISSIONER MARLON S. CASQUEJO, and COMMISSIONER ANTONIO T. KHO, JR.,** *Respondents*.

Promulgated:

September 15, 2020

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur in the result. Contrary to petitioners' assertions, the allocation of **additional seats** in favor of those party-lists receiving at least two percent (2%) of the total votes cast for the party-list system ("two percenters") in proportion to their "**total number of votes**," as provided for under Section 11 (b) of Republic Act No. (RA) 7941,[1] does **not** offend the equal protection clause and hence, remains constitutional.

At the onset, it is imperative to understand that the party-list system is a peculiar innovation that goes beyond our traditional perceptions when it comes to the electoral process. In a republican, democratic system of government like ours, people traditionally vote for certain personalities to represent their interests **as part of a constituency based on geographical division** (which, in the case of Congressmen, are called legislative districts). Whether in a national or a local election, voting and consequently, winning an election **under ordinary tradition** is based on **who** the people believe will be able to effectively translate these interests into legislative or executive action. Because the idea of a traditional electoral contest is a matter of "person-preference" over another, candidates compete in simple plurality voting, or a system of "first-past-the-post" (FPTP):

> In an FPTP system (sometimes known as a plurality single-member district system) the winner is the candidate with the most votes but not necessarily an absolute majority of the votes. x x x
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> x x x x

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[1] Entitled "AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR," also known as the "PARTY-LIST SYSTEM ACT," approved on March 3, 1995

> [FPTP], like other plurality/majority electoral systems, is defended primarily on the grounds of simplicity and its tendency to produce winners who are representatives beholden to defined geographic areas and governability.[2]

However, the Framers of the 1987 Constitution believed that our traditional electoral system did not truly fulfill the purpose of the legislative body,[3] which was "supposed to implement or give flesh to the needs and aspirations of the Filipino people."[4] Thus, the party-list system was introduced to ensure that weaker segments in society, whose constituencies go beyond the geographic lines drawn to define legislative districts, are properly represented in Congress. As explained during the constitutional deliberations:

> MR. OPLE: x x x
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> x x x x
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> There are two kinds of representation: the territorial representation, which is based on representative government, and which started taking root at the beginning of the 19th century in many of the Western countries which we now call the Western democracies. **It became evident later on that territorial representation has its limitations, that functional representation might be necessary in order to round off the excellence of a representative system**. And that was how the theory of party list representation or the reservation of some seats in a legislature for sectors came about.
>
> I think the whole idea is based on countervailing methods with the **aim of perfecting representation in a legislative body combining the territorial as well as the functional modes of representation.** The ideal manner of securing functional representation is through a party list system through popular suffrage so that when sectoral representatives get into a legislative body on this basis, rather than direct regional or district representation, they can rise to the same majesty as that of the elected representatives in the legislative body, rather than owing to some degree their seats in the legislative body either to an outright constitutional gift or to an appointment by the President of the Philippines. x x x[5] (Emphases supplied)
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> MR. MONSOD: x x x
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> x x x x
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> x x x It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly. It also

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2 <http://aceproject.org/ace-en/topics/es/esd/esd01/esd01a/esd01a01> (last visited July 23, 2020).
3 Records of the Constitutional Commission (R.C.C.) No. 39, July 25, 1986.
4 R.C.C. No. 45, August 1, 1986.
5 Id.

> means that, let us say, there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly. Those are the dynamics of a party list system.
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> **We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly. These sectors or these groups may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.**
>
> The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide; have about 1,000,000 or 1,500,000 votes. But they were always third place or fourth place in each of the districts. So, they have no voice in the Assembly. But this way, they would have five or six representatives in the Assembly even if they would not win individually in legislative districts. So, that is essentially the mechanics, the purpose and objectives of the party list system.[6] (Emphasis supplied)

Being based on "functional" rather than "territorial" representation, a party-list election is, at its core, "cause-centric" and not "person-centric" as in a traditional election. Although a party, being a juridical entity, can only conduct its business through natural persons (called nominees),[7] in a party-list election, people actually vote for a particular cause, which is then advocated by the party-list through its nominee in Congress. The "cause-centric" nature of a party-list election is amply reflected in the constitutional deliberations as follows:

> MR. MONSOD: **What the voters will vote on is the party**, whether it is UNIDO, Christian Democrats, BAYAN, KMU or Federation of Free Farmers, not the individuals. When these parties register with the COMELEC, they would simultaneously submit a list of the people who would sit in case they win the required number of votes in the order in which they place them. Let us say that this Commission decides that of those 50 seats allocated under the party list system, the maximum for any party is 10 seats. At the time of registration of the parties or organizations, each of them submits 10 names. Some may submit five, but they can submit up to 10 names who must meet the qualifications of candidates under the Constitution and the Omnibus Election Code. If they win the required number of votes, let us say they win 400,000 votes, then they will have one seat. If they win 2 million votes, then they will have five seats. In the latter case, the party will nominate the first five in its list; and in case there is one seat, the party will nominate the number one on the list.

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6 R.C.C. No. 36, July 22, 1986.

7 See *Alcantara v. Commission on Elections*, 709 Phil. 523 (2013).

But as far as the voters are concerned, they would be voting for party list or organizations, not for individuals.

MR. LERUM: Madam President, in view of the explanation, I am objecting to this amendment because it is possible that the labor sector will not be represented considering that those who will vote are all the voters of the Philippines. In other words, the representative of labor will be chosen by all the electors of the Philippines, and that is not correct. My contention is that the sectoral representative must be selected by his own constituents, and for that reason, I am objecting to this amendment.

MR. TADEO: Madam President, this is only for clarification.

THE PRESIDENT: Commissioner Tadeo is recognized.

MR. TADEO: Para sa marginalized sector, *kung saan kaisa ang magbubukid, ang* Sections 5 *at* 31 *ang pinakamahalaga dito. Sinasabi namin na hindi na mahalaga kung ang porma ng pamahalaan ay* presidential *o* parliamentary; *ang pinakamahalaga ay ang* "substance."

***Sinasabi naming nasa amin ang* people, *pero wala sa amin ang* power**. *At sinasabi nga ni* Commissioner Bacani, *noong tayo ay nagsisimula pa lamang*, 70 *porsiyento ang mga dukha at limang porsiyento lamang ang naghaharing uri. Ngunit ang iniwan niyang tanong ay ito: Sino ang may hawak ng* political power? *Ang limang porsiyento lamang.*

Kaya para sa amin, ito ang pinakamahalaga. Sa nakita ko kasi sa party list *ay ganito: Sa bawat* 200,000 *tao ay magkakaroon tayo ng isang* legislative district, *at ang kabuuang upuan ay* 198. *Ang ibig sabihin, ito iyong nakareserba sa mga* political parties *tulad ng* UNIDO, NP, PNP; LP, PDP-Laban, *at iba pa, ngunit puwede rin itong pumasok sa* party list; *puwede ring madominahan ang lehislatura at mawala ang* sectoral.

Iyon lamang ang pinupunto ko. Sa panig namin, dapat itong ibigay sa marginalized sector *sapagkat ito ang katugunan sa tinatawag naming* people's power *o kapangyarihang pampulitika. Ang ibig lamang naming sabihin ay ganito: Mula doon sa isang* political system *na nagpapalawig ng* feudal or elite structure *nagtungo tayo sa isang* grass-roots and participatory democracy. *Ibig naming mula doon sa* politics of personality *ay pumunta tayo sa* politics of issue. *Ano ang ibig naming sabihin? Kaming* marginalized sector *pag bumoboto, ang pinagpipilian lang namin sa* two-party system *ay ang* lesser evil. *Ngunit pag pumasok na kami dito, ang* Section 5 *ang pinakamahalaga sa amin.* ***Ang bobotohan namin ay ang katangian ng aming organisasyon. Ang bobotohan namin ay ang* issue *at ang* platform *naming dinadala at hindi na iyang* lesser evil *o ang tinatawag nating* "personality." *Para sa amin ito ay napakahalaga.***[8]
(Emphases, italics, and underscoring supplied)

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[8] R.C.C. No. 39, July 25, 1986.

Due to the unique objectives of party-lists, it was then necessary to devise a system to ensure – or at least, strive to ensure – the most meaningful way of translating the people's will in voting for causes, and not personalities. Accordingly, Congress established a party-list system based on the **proportional representation** concept.

To recount, Section 5 (1) and (2), Article VI of the 1987 Constitution provide that:

> Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, **and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations**.
>
> (2) The **party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list**. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector. (Emphases supplied)

Aside from providing that twenty percent (20%) of the total House membership be comprised of those coming from the party-list, the 1987 Constitution did not provide for any other specific mechanic regarding the party-list system. Instead, as may be gleaned from the clause "as provided by law," the Framers intended to reserve these mechanics for future legislation. In *Veterans Federation Party v. Commission on Elections* (*Veterans*),[9] the Court explained that "Congress was **vested with the broad power to define and prescribe the mechanics of the party-list system of representation**. The Constitution explicitly sets down only the percentage of the total membership in the House of Representatives reserved for party-list representatives."[10]

In line with the Framers' intent, Congress passed RA 7941, or the "Party-List System Act," and therein declared to promote "**proportional representation** in the election of representatives to the House of Representatives through a party-list system:"

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9 396 Phil. 419 (2000).

10 Id. at 438; emphasis supplied.

> Section 2. Declaration of policy. The State shall promote **proportional representation in the election of representatives to the House of Representatives through a party-list system** of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. x x x (Emphasis and underscoring supplied)

In contrast to the traditional FPTP system, proportional representation "implies an election system, wherein the representation of all classes of people is ensured, as each party gets as **many numbers of seats as the proportion of votes the candidate polls in the election**. In this system, **any political party or interest group obtains its representation in proportion to its voting strength** x x x. In this way, parties with the small support base, also get their representation in the legislature."[11]

However, "[p]roportional representation is a generic term, and it does not refer to a precise method of implementing the philosophy it denotes."[12] Thus, **in accord with its constitutional prerogative, Congress prescribed the specific parameters to achieve proportional representation insofar as Filipino-style party list elections are concerned**. These are contained in Section 11 of RA 7941 as follows:

> Section 11. *Number of Party-List Representatives.* – The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.
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> For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.
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> In determining the allocation of seats for the second vote, the following procedure shall be observed:
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> (a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
>
> **(b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in**

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11 <https://keydifferences.com/difference-between-first-past-the-post-and-proportional-representation.html> (last visited July 23, 2020); emphases supplied.

12 <http://prsa.org.au/municip1.htm> (last visited July 23, 2020).

> **proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.** (Emphasis and underscoring supplied)

In *Barangay Association for National Advancement and Transparency v. Commission on Elections* (*BANAT*),[13] the procedure in allocating seats for party-list representatives pursuant to Section 11 of RA 7941 was laid down by the Court:

> In determining the allocation of seats for party-list representatives under Section 11 of [RA] 7941, the following procedure shall be observed:
>
> 1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
>
> 2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.
>
> 3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.
>
> 4. Each party, organization, or coalition shall be entitled to not more than three (3) seats.
>
> In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two-percenter. Thus, the remaining available seats for allocation as "additional seats" are the maximum seats reserved under the Party List System less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats.[14]

In *BANAT*, the procedure for seat allocation was primarily divided into two rounds: the first round involved the allocation of the one guaranteed seat to the two-percenters, while the second round referred to the allocation of additional seats in proportion to the total number of votes. In *Gabriela Women's Party v. COMELEC*,[15] I summarized the complete guidelines for seat allocation as per the prevailing rulings on the matter:

> The guidelines in allocating the seats available to party-list representatives were laid down in *Veterans Federation Party v. COMELEC (Veterans)*, which were further refined in *Barangay Association for National Advancement and Transparency v. COMELEC (BANAT)*. Based on these guidelines, the process for computation is as follows:

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13 604 Phil. 131 (2009).

14 Id. at 162.

15 See my Separate Concurring Opinion in the Unsigned Resolution in G.R. No. 225198, February 7, 2017.

1. The **maximum number of available party list seats (APLS)**, which under Section 5 (2), Article VI of the 1987 Constitution "shall constitute **twenty per centum of the total number of representatives including those under the party list**," shall be first determined. This is arrived at by using the following formula:

$$\frac{\text{Number of Seats available to legislative districts}}{0.80} \times 0.20 = \text{Number of Seats Available to Party List Representatives (or APLS)}$$

2. Once the APLS is determined, the party-list candidates shall be **ranked from the highest to the lowest** based on the number of votes they garnered during the elections.

3. The **percentage of votes that each party-list candidate** garnered shall then be ascertained by using the following formula:

$$\frac{\text{Number of votes garnered}}{\text{Total votes cast}} = \text{Percentage of votes garnered}$$

Upon this determination, all party-list candidates that garnered **at least two percent (2%) of the total votes cast (in other words, "the two percenters") shall each be automatically entitled to one (1) seat**. This constitutes the **first round of allocation** of the available party-list seats. The total number of seats allotted to the "two percenters" (TP) shall then be noted for the next step.

4. Any of the "two percenters" may then qualify for **additional seats** by using the following formula:

$$\text{Percentage of total votes garnered} \times (\text{APLS} - \text{TP}) = \text{Additional Seat for Party-List Candidate}$$

It should be noted, however, that should the foregoing application yield a product constituting fractional values (*e.g.*, 0.66, 1.87, 2.39), said product shall be **ROUNDED-DOWN** to the nearest whole integer as the prevailing laws and rules do not allow for fractional seats.

Also, it should be noted that no party-list candidate shall be awarded more than two (2) additional seats, **since a party may only hold a maximum of three (3) seats**.

5. If the APLS has not been fully exhausted by the first allocation of seats to the two percenters, including the allocation of additional seats under Step 4 above, then the **remaining seats shall then be allocated (one [1] seat each) to the parties next in rank**, *i.e.*, those "two percenters" that did not qualify for an additional seat pursuant to Step 4, and thereafter, those

> who did not get at least two percent (2%) of the total number of votes cast, until all the available seats are completely distributed.[16]

The petitioners question the constitutionality of the prevailing formula in determining additional seats in favor of "two percenters." As it stands, Section 11 of RA 7941 prescribes that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats **in proportion to their total number of votes**." According to petitioners, "the allocation of additional seats in proportion to a party's total number of votes results in the **double-counting** of votes in favor of the two-percenters x x x [f]or the same votes which guarantee the two-percenters a seat in the first round of seat allocation are again considered in the second round. The provision purportedly violates the equal protection clause, hence, is unconstitutional."[17]

I disagree.

Case law states that "[t]he equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by **substantial distinctions** that make real differences, one class may be treated and regulated differently from the other."[18]

Indeed, there is a **substantial distinction** between two-percenters and non-two percenters in that the former enjoy the greater mandate of the people. In *Veterans*, the Court explained the rationale behind the two-percent threshold in the party-list system:

> The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very essence of "representation." Under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them. But to have meaningful representation, the elected persons must have the mandate of a sufficient number of people. Otherwise, in a legislature that features the party-list system, the result might be the proliferation of small groups which are incapable of contributing significant legislation, and which might even pose a threat to the stability of Congress. Thus, even legislative districts are apportioned according to "the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" to ensure meaningful local representation.[19]

The distinct position of two percenters garnering the support of a greater number of people entitles them to *additional seats* based on the total number of votes, *even though these same votes have been factored in when they have qualified for one guaranteed seat in meeting the two percent*

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16 Id.; citations omitted.
17 *Ponencia*, p. 2, citing *rollo*, pp. 12-13.
18 *Quinto v. COMELEC*, G.R. No. 189698, February 22, 2010; emphasis supplied.
19 Supra note 10.

threshold. These advantages bestowed to two percenters constitute **Congress' way of implementing the concept of "cause" representation "in proportion to voting strength**." Since the greater number of votes means that more people believe in a two percenter's cause and policy platform more than others, the party is therefore given an additional seat in Congress. In turn, this additional seat would theoretically give the party a "stronger voice" in Congress and hence, a better opportunity to advocate for legislation to advance the cause it represents.

Because party-list elections are based on proportional representation and not simple pluralities, there is really no double-counting of votes when all the votes are considered in allocating *additional* seats in favor of two percenters. **The electoral system of proportional representation inherently recognizes voting proportions relative to the total number of votes**. Petitioners' proposal to exclude the number of votes that have qualified two percenters for their guaranteed seat in the second round of additional seat allocation is tantamount to **altering the electoral landscape** by reducing the "voter strength" which they have rightfully obtained. **This effectively results in the diminution of the party's ability to better advocate for legislation to advance the cause it represents despite being supported by a larger portion of the electorate**.

Moreover, as the *ponencia* aptly demonstrated, petitioner's proposal would result into lessening, if not removing the chances of a two percenter to qualify for an additional seat. In consequence, two percenters and non-two percenters will practically obtain the same number of seats and hence, disregard the substantial distinction between them:

> In petitioners' proposal, however, a 2% deduction will be imposed against party-list X before proceeding to the second round. This would result in X falling to the bottom of the ranking with zero percent (0%) vote, dimming its chances, if not disqualifying it altogether, for the second round. This is **contrary to the language of the statute which points to proportionality in relation to the TOTAL number of votes received** by a party, organization or coalition in the party-list election, and the **intention** behind the law **to acknowledge the two-percenters' right to participate in the second round of seat allocation for the additional seats**.[20]

At this juncture, it is opportune to clarify that the allocation of additional seats in proportion to the total number of votes in favor of the two percenters does not defy the principle of "one person, one vote." In its proper sense, the principle of "one person, one vote" hearkens to voter equality – that is, that all voters are entitled to one vote, and that each vote has equal weight with that of others. This principle is a knock against elitism and advances the egalitarian concept that all persons are equal before the eyes of the law.

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[20] *Ponencia*, pp. 27-28; emphases in the original.

Regardless of social standing, lineage, age, race or gender, a person's vote should not mean more than others.

Insofar as the mechanics under Section 11 of RA 7941 are concerned, there is no instance at all wherein a person will be entitled to more than one vote. Neither is any person's vote considered weightier than others. All persons voting in the party-list system are mandated to vote only once and each vote is also counted as one. Further, it must be highlighted that the allocation of guaranteed and additional seats to two percenters is not a matter of counting votes twice. Rather, this method of distribution is inherent to the electoral system of proportional representation, which is different from counting votes based on simple pluralities. Since these two electoral systems operate on distinct planes, there is no violation of the principle of "one person, one vote" in this case.

Finally, it must be reiterated that Congress was given the constitutional prerogative to devise the mechanics of the party-list system. The sole intent was to allow functional representation by weaker segments of society that goes beyond geographical boundaries of our traditional FPTP system. These mechanics are contained in Section 11 of RA 7941, which prescribes, among others, that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats **in proportion to their total number of votes.**" As the only issue raised by petitioners is on the unconstitutionality of this specific mechanic based on equal protection grounds, the Court should refrain from going beyond the same.

In this regard, I thus maintain my reservations regarding the proposed formula of my esteemed colleague, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), who disagrees with the *BANAT* formula insofar as it prescribes for two (2) rounds of seat allocation when the first clause of Section 11 (b) of RA 7941 does not require the same.[21] According to Justice Caguioa:

> ***A straightforward formula better reflects the spirit behind the party-list system***
>
> Proceeding from the above discussion, I find that the three-tier formula expressed in *BANAT* fails to reflect the intent behind the introduction of the party- list system. Section 2 of RA 7941 states that the "State shall develop and guarantee a full, free and open party system in order to attain the **broadest possible representation** of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and **shall provide the simplest scheme possible**."

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[21] See Separate Opinion of Justice Caguioa, p. 7.

It is my considered view that these objectives will be best achieved by a straightforward formula in which allotted seats are determined by simply multiplying the percentage of votes garnered by the [party-list Organization (PLO)] with the [available party-list seats (APLS)].

Based on this formula, the party-list seats are determined as follows:

Step One. Ranking of PLOs. All PLOs that participated in the election shall be ranked from the highest to the lowest based on the number of votes they each received during the election.

Step Two. Determination of percentage of votes per PLO in proportion to Total Votes of all PLOs. After the ranking, the percentage of votes that each PLO garnered shall then be computed as follows:

$$\frac{\text{Total votes garnered by PLO}}{\text{Total votes cast for the party-list system}} = \text{Percentage of votes garnered}$$

Step Three. Allocation of seats two percenters. The seats allotted to each of the qualified PLOs (the two percenters) shall then be ascertained using the following formula:

$$\text{Percentage of votes garnered} \times \text{APLS} = \text{Seat/s for the concerned qualified PLO}$$

Since the prevailing law and rules do not allow for fractional representation, the product obtained herein shall be rounded down to the nearest whole integer. The three (3) seat limit shall likewise be applied.

This step does away with the three-tier allocation in *BANAT*. In particular, it does away with the first round of allocation. In *BANAT,* the Court created two rounds of allocation because of its interpretation that "[t]he first clause of Section 11 (b) of R.A. No. 7941 [which] states that "parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each"... guarantees a seat to the two percenters." Thus, it created a first of two rounds of allocation where the two percenters would be given one (1) seat each.

However, this separate round of allocation for the two percenters is not supported nor required by the letter of the law. **There is nothing in the text of the law which requires separate rounds of seat allocation**. All that the law requires is that those who garner 2% of the votes be guaranteed one (1) seat each. To illustrate, the straightforward formula still satisfies the requirements of Section 11(b), even without the "first round of allocation," because the APLS will always be more than fifty (50) seats in light of the current number of congressional districts. Thus, all PLOs who obtained at least two percent (2%) of the total votes cast in the party-list system are, in reality, guaranteed one (1) seat each — **even in the absence of a separate round "ensuring" them one (1) seat.**

Meanwhile, the second requirement of Section 11(b) – that the "additional seats" for those who obtained more than two percent of the

> total votes cast in the party-list system shall be in proportion to the total number of votes it obtained – is also complied with because the computation of additional seats for each of the two percenters is in direct proportion to the total number of votes they actually garnered.
>
> *Step Four. Allocation of remaining seats.* If the APLS has not been fully exhausted after allocating seats to the two percenters (but still enforcing the 3 seat limit) – as is what is expected to happen because, as mentioned, APLS will always be more than fifty seats – the remaining seats shall then be allocated (one (1) seat each) to the parties next in rank (*i.e.* those who did not get at least two percent of the total number of votes cast), until all the APLS are completely distributed.[22]

However, since this particular formula has not been raised by any of the petitioners or any affected party-list for that matter, nor has the Office of the Solicitor General been given an opportunity to comment on the same, I submit that this is not the appropriate case to tackle the formula's merit.

In any event, the *BANAT* formula which first allocates guaranteed seats to two percenters and then allocates additional seats also in favor of qualifying two percenters, **appears to merely mirror the textual progression of Section 11 of RA 7941 as worded**. The first round is based on the first sentence of Section 11 (b), while the second round is based on the first proviso that follows in sequence:

> Section 11. *Number of Party-List Representatives.* –
>
> x x x x
>
> (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be **entitled to one seat each**: Provided, That those garnering more than two percent (2%) of the votes shall **be entitled to additional seats in proportion to their total number of votes**: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats. (Emphases supplied)

Further, should the Court adopt Justice Caguioa's formula, then it would **be practically fusing together the character of guaranteed seats and additional seats**. In effect, the voter strength garnered by two percenters would be diminished, resulting in weaker voice in Congress; in addition, the separate provisions on guaranteed and additional seating would also be rendered redundant.

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[22] Separate Opinion of Justice Caguioa, pp. 14-15.

While the more straightforward formulation would mathematically increase the probability of more party-lists qualifying for a seat in Congress, such formulation seems to go against the prerogative of legislature to recognize the advantageous position gained by two percenters. Indeed, Congress intended to attain "the broadest representation possible" but it is currently **unclear** if this general objective was meant to remove the advantages rightfully gained by two percenters. Thus, **recognizing the potential ripple effects of adopting this "unraised" proposed formula in the composition of legislature**, the Court should thresh out this matter in the appropriate case. As Justice Caguioa himself recognizes, "the straightforward formula may not be immediately applied in this case because of the requirements of due process. As the adoption of the straightforward formula will not only affect petitioners but also other qualified PLOs which have already been proclaimed by the COMELEC, and whose representatives have already assumed office, due process mandates that all qualified PLOs be heard on the matter."[23]

For all these reasons, I therefore vote to dismiss the petition for failure of the petitioners to properly make out their case. I qualify, however, that the petition ought to be dismissed on the merits rather than on procedural grounds as discussed in the *ponencia*. On the procedural aspects, I share the views of my other esteemed colleague, Associate Justice Alexander G. Gesmundo, that petitioners have indeed raised the issue at the earliest opportunity, that *estoppel* would not apply, and that the issue is the very *lis mota* of the case.[24]

On this score, I deem it apt to point out that petitioners could not have previously questioned the constitutionality of Section 11 of RA 7941 (as they have presently done so) back in 2013 and 2016 since they have both won in the elections they respectively participated in[25] and just recently lost in 2019. Their loss was necessary in order for them to satisfy the requisite of an actual and justiciable controversy, which connotes the existence of a "**conflict of legal rights**," or "an assertion of **opposite legal claims**,"[26] as well as to clothe them with *locus standi*, which is "a personal and substantial interest in the case, such that they have sustained or are in immediate danger of sustaining, **some direct injury as a consequence of the enforcement of the challenged governmental act**."[27] Upon their loss in 2019, they were therefore prompted to immediately take the matter to Court at the earliest opportunity.

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23 See id. at 18.

24 See Separate Opinion of Justice Gesmundo, pp. 7-12.

25 ANGKLA garnered one seat in the 2013 elections (<https://news.abs-cbn.com/nation/05/28/13/comelec-proclaims-24-more-party-list-winners> [last visited July 23, 2020]) while ANGKLA and SBP won one seat each in the 2016 elections (<https://newsinfo.inquirer.net/786644/winners-of-59-seats-in-party-list-race-announced> [last visited July 23, 2020]).

26 *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1090 (2017); emphasis supplied.

27 Id. at 1091; emphasis supplied.

ACCORDINGLY, I vote that the petition be dismissed due to lack of merit in its substantive arguments.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court