EN BANC

G.R. No. 257610 – GLENN QUINTOS ALBANO, *petitioner,* ***versus*** **COMMISSION ON ELECTIONS,** *respondent.*

UDK 17230 – CATALINA G. LEONEN-PIZARRO, *petitioner,* ***versus*** **COMMISSION ON ELECTIONS,** *respondent.*

Promulgated:

January 24, 2023

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CONCURRING OPINION

CAGUIOA, *J.*:

Before the Court are two (2) consolidated Petitions for *Certiorari* and Prohibition (Consolidated Petitions) filed pursuant to Rule 65 of the Rules of Court.

In G.R. No. 257610, petitioner Glenn Quintos Albano (Albano) ran for councilor of Taguig City in the 2019 elections. He lost. He later became the second nominee of the sectoral party Talino at Galing ng Pinoy Party-List for the 2022 National and Local Elections (2022 elections).

In UDK 17230, petitioner Catalina G. Leonen-Pizarro (Pizarro) ran for mayor of Municipality of Sudipen, La Union in the 2019 elections. She lost. She later became the first nominee of Arts, Business and Science Professionals Party-List for the 2022 elections.

However, the nominations of both Albano and Pizarro (petitioners) were disallowed under Section 8[1] of Republic Act No. (RA) 7941,[2] and its implementing rules, Sections 5(d)[3] and

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[1] Sec. 8. *Nomination of Party-List Representatives.* Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. **The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election.** No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned. Emphasis supplied.

[2] Also known as the "Party-List System Act," approved on March 3, 1995.

[3] Sec. 5. *Contents and Form of the Certificate of Nomination.* – The certificate of Nomination of a [political party], sectoral party organization or [coalition of political parties] shall contain the following:

x x x x

d. a certification that the nominees have all the qualifications and none of the disqualifications provided by law and that they are not candidates for any elective office or have lost in their bid for an elective office in the May 13, 2019 National and Local Elections[.]

x x x x

10[4] of the Commission on Elections (COMELEC) Resolution No. 10717.[5] These provisions prohibit "a person who has lost his bid for an elective office in the immediately preceding election" from being included in the list of party-list nominees.

Petitioners thus come before the Court on petitions for *certiorari* challenging the constitutionality of the aforementioned law and rules on two (2) grounds: 1) that they impose an additional qualification for party-list nominees, thus violating the exhaustive list of qualifications under Section 6,[6] Article VI of the 1987 Constitution, following the Court's ruling in *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*[7] (*SJS*); and 2) that they are violative of the equal protection clause.

The *ponencia* grants the Consolidated Petitions and declares as invalid and unconstitutional:[8]

> (1) the phrase "*a person who has lost his bid for elective office in the immediately preceding election*" under Section 8 of RA 7941;
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> (2) the phrase "*have lost in their bid for an elective office in the May 13, 2019 National and Local Elections*" under Section 5(d) of COMELEC Resolution No. 10717; and
>
> (3) the phrase "*or a person who has lost his bid for an elective office in the May 13, 2019 National and Local Elections*" under Section 10 of COMELEC Resolution No. 10717.[9]

I concur in the disposition of the *ponencia*. The assailed provisions fail to demonstrate a rational basis for the classification made between party-list nominees who lost in the previous election versus those who won or did

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[4] Sec. 10. *Nomination of Party-List Representatives.* – A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. **The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the May 13, 2019 National and Local Elections.** No change of names or alterations of the order of nominees shall be allowed after the same shall have been submitted to the Commission except in cases where the nominee dies, becomes incapacitated, or there is a valid withdrawal and substitution of nominees as provided in the succeeding sections, in which case, the name of the substitute nominee shall be placed last in the list. Emphasis supplied.

[5] Rules and Regulations Governing: 1) Political Conventions; 2) Submission of Nominees of Groups or Organizations Participating Under the Party-List System of Representation; and 3) Filing of Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in Connection with the May 9, 2022 National and Local Elections, promulgated on August 18, 2021.

[6] Article VI. The Legislative Department

x x x x

Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

[7] 591 Phil. 393 (2008).

[8] *Ponencia*, pp. 22-23.

[9] See id. at 5-8.

not participate therein. Further, the prohibition against such election losers from participating in the party-list system is repugnant to the policy behind such system of representation. As such, I concur that the assailed law and its implementing rules are indeed unconstitutional for violating the equal protection clause.

The intent of the framers of the 1987 Constitution behind Section 5(1) is to empower the Congress to add qualifications for party-list representatives.

Section 5(1), Article VI of the 1987 Constitution (Section 5[1]), states:

> Sec. 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**. (Emphasis and underscoring supplied)

A review of the deliberations of the Constitutional Commission reveals that the framers of the 1987 Constitution determined the Congress to be in the best position to draft, study, and enact the details regarding the implementation of the party-list system. The following exchange between Commissioners Soc Rodrigo and Christian S. Monsod enlightens:

> MR. RODRIGO. x x x In the light of the phrase "AS PROVIDED BY LAW," do I take it that this party list system and sectoral representation provision will not take effect until an enabling act or an implementing legislation shall have been enacted by Congress?
>
> MR. MONSOD. Madam President, the first Assembly will be in March or April. But **when we say, "AS PROVIDED BY LAW," it could really mean that it may be by ordinance appended to this constitution or an executive order by the incumbent President or, as the Gentleman has said, by law provided by the incoming Congress**. So, it could be any of these ways.
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> MR. RODRIGO. Madam President, we are all witnesses to the difficulty in arriving at a consensus of these very novel ideas on the disputes that we have had. And up to now, there is no real consensus yet. Does the Commissioner believe that we should really try to go into the details by enacting an ordinance to the Constitution? x x x
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> MR. MONSOD. We just want to establish the principle of the party list system with sectoral representation in the present Constitution. x x x
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> MR. RODRIGO. **Considering our time constraint and the many other provisions that we have not yet discussed, does the Commissioner**

> **believe that we are in a position to draft, study, and enact a virtual piece of legislation, with <u>all details, regarding the implementation of this party-list system and sectoral representation,</u> so that it will be finished in time for the approval of this Constitution? <u>Should we not abandon that idea and leave this matter to the legislature?</u>**
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> MR. MONSOD. I believe that it is really not a very complicated system, and it is possible. But I will yield to the time problem, if there is really a time problem. Certainly, I do not think that this Commission would want to put an ordinance that is half-baked.[10] (Emphasis and underscoring supplied)

As can be gleaned from the foregoing, the framers' penultimate goal is to have a party-list system. With respect, however, to the details as to its implementation, the same was envisioned to be appended to the Constitution or, *in the alternative*, to be enacted by the President or the legislature. This evinces the intent of the framers to delegate the broad power of formulating rules operationalizing the party-list system, in the event that the same could not be made part of the Constitution.

As ratified, the 1987 Constitution only provides the manner of filling the seats reserved for sectoral representation, *i.e.*, by appointment of the President from a list of nominees by the respective sectors, "*until a law is passed.*"[11]

Accordingly, I agree that Congress, by express language of Section 5(1), is empowered to determine who shall be elected through the party-list system, and corollary thereto, to determine the qualifications of the party-list representatives elected under this system.

Any additional qualification provided by statute is subject to the general limitations on legislation, including the equal protection clause. The proper test to determine the reasonableness of the classification is the rational basis test.

Notably, even if Section 5(1) empowers Congress to define and prescribe the mechanics of the party-list system of representation[12] and to expand the qualifications for membership in the House of Representatives (HOR), any additional qualification imposed by Congress must still yield to the general limitations on legislation.[13]

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[10] II Record, CONSTITUTIONAL COMMISSION, p. 572 (1 August 1986).

[11] 1987 CONSTITUTION, Article XVIII, Sec. 7.

[12] *Veterans Federation Party v. COMELEC*, 396 Phil. 419 (2000).

[13] Any legislation must be in line with the intent and purpose behind the party-list system:

> The party-list system was an innovation introduced by the drafters of the Constitution to diversify representation in the [HOR]. It was meant to "open the system," in recognition of the real need to provide an effective platform to those who belong to marginalized sectors of society, such as labor, peasant, urban poor, indigenous cultural communities, women, and youth, and also to provide an avenue to those who had been

Here, petitioners argue that the exclusion of individuals who lost in the immediately preceding election from the list of nominees for party-list representatives under the assailed provisions violates the equal protection clause.[14] Meanwhile, the COMELEC, through the Office of the Solicitor General (OSG), argues that by virtue of Section 5(1), there is a clear distinction between the members of the HOR who are elected from legislative districts *vis-à-vis* those who are elected through the party-list system, and that such distinction is valid as it serves a legitimate purpose – preventing persons from merely using the party-list system as a mechanism to secure public office after having lost in the previous elections.[15]

In numerous instances, the Court has explained that the fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification.[16] It is not a guaranty of equality in the application of the laws upon all citizens of the state and does not require that, in order to avoid the constitutional prohibition against inequality, every man, woman, and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them.[17]

In the leading case of *Ichong v. Hernandez*,[18] the Court explained the nature of the equal protection guarantee in this wise:

> The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either [by] the object to which it is directed or by [the] territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not. x x x.[19] (Italics in the original)

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unable to gain seats in the legislature because of the dominance of the traditional and well-established political parties. x x x

x x x x

x x x 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 [HOR] by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible. (Separate Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. v. COMELEC*, G.R. No. 246816, September 15, 2020.)

[14] *Ponencia*, p. 12.

[15] Id. at 12-13.

[16] *Tiu v. CA*, 361 Phil. 229, 239 (1999).

[17] *Zomer Development Company, Inc. v. Special Twentieth Division of the CA, Cebu City*, G.R. No. 194461, January 7, 2020, 928 SCRA 110, 134.

[18] 101 Phil. 1155 (1957).

[19] Id. at 1164.

In other words, for a classification to be valid and reasonable, it must: (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.[20] To determine whether such classification is reasonable, the Court has formulated three tests, namely: (1) the strict scrutiny test; (2) the intermediate scrutiny test; and (3) the rational basis test.[21]

The strict scrutiny test applies when a classification either interferes with the exercise of fundamental rights, which includes the basic liberties guaranteed under the Constitution, or burdens suspected classes.[22] The intermediate scrutiny test applies when a classification does not involve suspected classes or fundamental rights, but requires a heightened scrutiny, such as in classifications based on gender and legitimacy.[23] Lastly, the rational basis test applies to all other subjects not covered by the first two tests.[24]

Under most circumstances, the Court exercises judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power.[25] Judicial scrutiny would usually be based on the rational basis test, and the legislative discretion would be given deferential treatment.[26] However, if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict[27] and thus, the Court uses the strict scrutiny test or the intermediate scrutiny test, depending on the circumstances.

I agree with the *ponencia* that the rational basis test is the appropriate test to use in the instant case.[28] As it correctly observed, "one's interest in seeking office, by itself, is not entitled to constitutional protection."[29] I agree that whether expressly or implicitly, the Constitution does not guarantee a fundamental right to run for public office that would call for the application of the strict scrutiny test.

Fundamental rights, once described as liberties that operate as trumps,[30] have no exact or precise definition in our own jurisdiction as well

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20 *People v. Cayat*, 68 Phil. 12, 18 (1939).
21 *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1113-1114 (2017); *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 282 (2009).
22 Id. at 1113; id. at 282.
23 Id. at 1113-1114.
24 Id. at 1114.
25 *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 599 (2004).
26 Id.
27 Id. at 600.
28 *Ponencia*, p. 15.
29 Id., citing *Quinto v. COMELEC*, 627 Phil. 193, 253 (2010).
30 See Separate Opinion of Retired Associate Justice Francis H. Jardeleza in *Versoza v. People*, G.R. No. 184535, September 3, 2019, citing Easterbrook, "Implicit and Explicit Rights of Association," Vol. 10 Harvard Journal of Law and Public Policy (1987), pp. 91-92.

as in United States (US) jurisdiction.[31] This notwithstanding, there appears little disagreement as to the fundamental nature of an asserted liberty interest when the same can be read from the text of the Bill of Rights of the Constitution itself.[32] The disagreement does arise in cases where an asserted liberty interest, which is not textually found in the Constitution or is otherwise unenumerated, is nonetheless regarded as fundamental. As the Supreme Court of the United States (SCOTUS) observed in *Bowers v. Hardwick*,[33] despite the language of the Due Process Clauses of the Fifth and Fourteenth Amendments in the US Constitution, which appears to focus only on the processes by which life, liberty, or property is taken, these Clauses have been interpreted, in numerous cases, to have substantive content. Consequently, rights which are, to a great extent, immune from federal or state regulation or proscription are subsumed to these Clauses and are likewise recognized as fundamental.

Under our jurisdiction, the presence of unenumerated fundamental rights has also certainly been recognized. In his Separate Opinion in *Versoza v. People*,[34] Retired Supreme Court Associate Justice Francis H. Jardeleza (*J.* Jardeleza), noted that the Court had, on some occasions, ruled on assertions of these rights. These include the right to enter into (and terminate) contracts in the early case of *People v. Pomar*,[35] the right to personal privacy in *Morfe v. Mutuc*,[36] the right to a balanced and healthful ecology in *Oposa v. Hon. Factoran, Jr.*,[37] the right of parents to exercise parental control over their minor child and the liberty interest in the access to safe and non-abortifacient contraceptives in *Spouses Imbong v. Hon. Ochoa, Jr.*,[38] the woman's right to choose whether to marry and to decide whether she will bear and rear her child outside of marriage in *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*,[39] and the liberty interest on the part of a Filipino spouse to be recapacitated to marry in *Republic v. Manalo*.[40]

J. Jardeleza pertinently cautioned, however, that should the Court recognize and accord the status of a fundamental right to an asserted but unenumerated liberty interest, it must be through a deliberate and open approach due to an ostensible lack of clear guidelines, in our own jurisdiction and even in US jurisdiction, on how such rights are located.

The SCOTUS is, indeed, circumspect in this endeavor. It admits to having "always been reluctant to expand the concept of substantive due process because **guideposts for responsible decision[-]making in [such]**

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[31] See Winkler, Adam, "Fundamentally Wrong About Fundamental Rights" (2006). *Constitutional Commentary*.36. <https://scholarship.law.umn.edu/concomm/36>, last accessed on January 12, 2023.
[32] See Separate Opinion of Retired Associate Justice Francis H. Jardeleza in *Versoza v. People*, supra note 30.
[33] 478 U.S. 186 (1986).
[34] Supra note 30.
[35] 46 Phil. 440 (1924).
[36] 130 Phil. 415 (1968).
[37] 296 Phil. 694 (1993).
[38] 732 Phil. 1 (2014).
[39] 781 Phil. 610 (2016).
[40] 831 Phil. 33 (2018).

an unchartered area are scarce and open-ended."[41] The reluctance of the SCOTUS also stems from the humble recognition that by extending constitutional protection to an asserted right or liberty, courts, to a great extent, place the matter outside the arena of public debate and legislative action.[42] As such, the SCOTUS acknowledges that it should exercise utmost care in identifying an unenumerated and fundamental right lest the liberty protected by the Constitution be subtly transformed into mere policy preferences of its members.[43]

Thus, in *Washington v. Glucksberg*,[44] the SCOTUS recounted the two primary features of its established method of substantive due process analysis, to wit:

> x x x First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, **objectively, "deeply rooted in this Nation's history and tradition,"** x x x (**"so rooted in the traditions and conscience of our people as to be ranked as fundamental"**), and **"implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed,"** x x x. Second, we have required in substantive-due-process cases **a "careful description"** of the asserted fundamental liberty interest. x x x **Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decision[-]making,"** x x x that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."[45] (Emphasis supplied, and citations and italics omitted)

Here, to reiterate, the right to run or to be voted for in public office is neither expressly nor implicitly granted in our Constitution. Nowhere in the Constitution does it unequivocally say so.

It may appear that Section 26, Article II of the 1987 Constitution grants otherwise when it provides, in part, that "[t]he State shall guarantee equal access to opportunities for public service x x x." This, however, has already been settled or interpreted by the Court in the negative.

In *Timbol v. COMELEC*[46] (*Timbol*), the Court declared that the guarantee under Article II, Section 26 of the 1987 Constitution is not a guarantee to a constitutional right to run for public office. To run for public office, it said, is a mere privilege subject to limitations imposed by law.

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41 *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), citing *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992). Emphasis supplied.
42 Id.
43 Id.
44 Id.
45 Id. at 720-721.
46 754 Phil. 578, 586 (2015).

Timbol, in turn, relied on an earlier case, *Rev. Pamatong v. COMELEC*[47] (*Pamatong*), from which the foregoing disquisition came. The common issue in *Timbol* and *Pamatong* dwelled on whether nuisance candidates may be prohibited or excluded from participating in the elections, despite the existence of Section 26, Article II of the 1987 Constitution. Ruling in the affirmative, *Pamatong* elaborated on the validity of such prohibition in this way:

> **Implicit in the petitioner's invocation of the constitutional provision ensuring "equal access to opportunities for public office" is the claim that there is a constitutional right to run for or hold public office and, particularly in his case, to seek the presidency. There is none. What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort.**
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> The "equal access" provision is a subsumed part of Article II of the Constitution, entitled "Declaration of Principles and State Policies." The provisions under the Article are generally considered not self-executing, and there is no plausible reason for according a different treatment to the "equal access" provision. Like the rest of the policies enumerated in Article II, the provision does not contain any judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action. The disregard of the provision does not give rise to any cause of action before the courts.
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> An inquiry into the intent of the framers produces the same determination that the provision is not self-executory. The original wording of the present Section 26, Article II had read, "The State shall broaden opportunities to public office and prohibit public dynasties." Commissioner (now Chief Justice) Hilario Davide, Jr. successfully brought forth an amendment that changed the word "broaden" to the phrase "ensure equal access," and the substitution of the word "office" to "service." He explained his proposal in this wise:
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> > I changed the word "broaden" to "ENSURE EQUAL ACCESS TO" because what is important would be equal access to the opportunity. *If you broaden, it would necessarily mean that the government would be mandated to create as many offices as are possible to accommodate as many people as are also possible.* That is the meaning of broadening opportunities to public service. *So, in order that we should not mandate the State to make the government the number one employer and to limit offices only to what may be necessary and expedient yet offering equal opportunities to access to it, I change the word "broaden."*
>
> Obviously, the provision is not intended to compel the State to enact positive measures that would accommodate as many people as possible into public office. The approval of the "Davide amendment" indicates the design of the framers to cast the provision as simply

[47] 470 Phil. 711 (2004).

enunciatory of a desired policy objective and not reflective of the imposition of a clear State burden.

Moreover, the provision as written leaves much to be desired if it is to be regarded as the source of positive rights. It is difficult to interpret the clause as operative in the absence of legislation since its effective means and reach are not properly defined. Broadly written, the myriad of claims that can be subsumed under this rubric appear to be entirely open-ended. Words and phrases such as "equal access," "opportunities," and "public service" are susceptible to countless interpretations owing to their inherent impreciseness. Certainly, it was not the intention of the framers to inflict on the people an operative but amorphous foundation from which innately unenforceable rights may be sourced.

As earlier noted, the privilege of equal access to opportunities to public office may be subjected to limitations. Some valid limitations specifically on the privilege to seek elective office are found in the provisions of the Omnibus Election Code [(OEC)] on "Nuisance Candidates" and COMELEC Resolution No. 6452 dated December 10, 2003 outlining the instances wherein the COMELEC may *motu proprio* refuse to give due course to or cancel a *Certificate of Candidacy*.

As long as the limitations apply to everybody equally without discrimination, however, the equal access clause is not violated. Equality is not sacrificed as long as the burdens engendered by the limitations are meant to be borne by anyone who is minded to file a certificate of candidacy. In the case at bar, there is no showing that any person is exempt from the limitations or the burdens which they create.[48] (Citations omitted, emphasis supplied, and italics in the original)

Consistent with the foregoing interpretation as to the asserted right to run for public office, the Court, in *Aratea v. COMELEC*,[49] notably equated the privilege with simply having the eligibility for the public office. In said case, Section 74 of the OEC was put into the fore in light of a candidate's alleged false material representation in his Certificate of Candidacy (CoC). Said candidate certified under oath that he was eligible for the office he sought election despite having been elected and having served for four consecutive terms already immediately prior to the term for the relevant election period. The Court ruled accordingly:

Section 74 requires the candidate to certify that he is eligible for the public office he seeks election. Thus, Section 74 states that "the certificate of candidacy shall state that the person filing x x x is eligible for said office." The three-term limit rule, enacted to prevent the establishment of political dynasties and to enhance the electorate's freedom of choice, is found both in the Constitution and the law. After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is ineligible. One who has an ineligibility to run for elective public office is not "eligible for [the] office." As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the

[48] Id. at 715-719.
[49] 696 Phil. 700 (2012).

ineligibilities to run for the public office.[50] (Citation and emphasis omitted, and underscoring supplied)

In the same vein, the question as to whether there is an implicitly recognized fundamental right to run for public office has likewise been settled by the Court in another case, *Quinto v. COMELEC*[51] (*Quinto*). What was assailed in said case was COMELEC Resolution No. 8678 on the Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections. Petitioners therein, who were appointive public officials, questioned Section 4(a) of COMELEC Resolution No. 8678, which provided for the effects of filing of CoCs, to wit:

> SEC. 4. *Effects of Filing Certificates of Candidacy.* – a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

The Court initially declared Resolution No. 8678 unconstitutional for violating the equal protection clause and for being overbroad. On reconsideration, however, the Court reversed its original decision, taking its cue from the US jurisprudence where the right to run for public office was being anchored on the fundamental freedoms of expression and association. It held that the right to run for public office is not accorded a constitutional guarantee as its purported ties with the other well-settled and recognized fundamental freedoms of expression and association are tenuous. Thus:

> Accordingly, our assailed Decision's submission that the right to run for public office is "inextricably linked" with two fundamental freedoms – those of expression and association – lies on barren ground. American case law has in fact **never recognized a fundamental right to express one's political views through candidacy, as to invoke a rigorous standard of review**. ***Bart v. Telford*** pointedly stated that "[t]he First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either." Thus, one's interest in seeking office, **by itself**, is **not** entitled to constitutional protection. Moreover, one cannot bring one's action under the rubric of freedom of association, absent any allegation that, by running for an elective position, one is advancing the political ideas of a particular set of voters.
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> Prescinding from these premises, it is crystal clear that the provisions challenged in the case at bar, are not violative of the equal protection clause. The deemed-resigned provisions substantially serve governmental interests (*i.e.*, (i) efficient civil service faithful to the government and the people rather than to party; (ii) avoidance of the appearance of "political justice" as to policy; (iii) avoidance of the danger of a powerful political machine; and (iv) ensuring that employees achieve

[50] Id. at 731-732.
[51] Supra note 29.

> advancement on their merits and that they be free from both coercion and the prospect of favor from political activity). These are interests that are important enough to outweigh the non-fundamental right of appointive officials and employees to seek elective office.[52] (Citations omitted, emphasis in the original, and underscoring supplied)

Quinto took note of the cases decided by the SCOTUS, *United States Civil Service Commission v. National Association of Letter Carriers AFL-CIO*[53] (*Letter Carriers*) and *Broadrick v. State of Oklahoma*[54] (*Broadrick*), which both impugned the constitutionality of statutory provisions prohibiting federal and state employees, under pain of dismissal and possible criminal sanctions, from taking an active part in political management or in political campaigns. Specifically, these prohibited acts were with regard to announcements of candidacy for nomination or election to local office.

In *Letter Carriers*, the plaintiffs challenged the enforcement by the Civil Service Commission of a prohibition under the so-called Hatch Act against active participation in political management or political campaigns which said plaintiffs desired to engage in. In particular, these desired activities included campaigning for candidates for public office, **running for state and local offices**, and participating as a delegate in a party convention or holding office in a political club. In upholding the constitutionality of the ban, the SCOTUS significantly explained:

> We unhesitatingly reaffirm the x x x holding that Congress had, and has, the power to prevent x x x others x x x from holding a party office, working at the polls, and acting as party paymaster for other party workers. An Act of Congress going no farther would, in our view, unquestionably be valid. So would it be if, in plain and understandable language, the statute forbade activities such as organizing a political party or club; actively participating in fund-raising activities for a partisan candidate or political party; **becoming a partisan candidate for, or campaigning for, an elective public office**; actively managing the campaign of a partisan candidate for public office; initiating or circulating a partisan nominating petition or soliciting votes for a partisan candidate for public office; or serving as a delegate, alternate or proxy to a political party convention. **Our judgment is that neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.**
>
> Such decision on our part would no more than confirm the judgment of history, a judgment made by this country over the last century that **it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited**. That this judgment eventuated is indisputable, and the major steps in reaching it may be simply and briefly set down.[55] (Emphasis supplied)

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[52] Id. at 253-254.
[53] 413 U.S. 548, 93 S. Ct. 2880 (1973).
[54] 413 U.S. 601, 93 S. Ct. 2908 (1973).
[55] Supra note 53, at 556-557.

In *Broadrick,* on the other hand, state employees charged by the Oklahoma State Personnel Board with actively engaging in partisan political activities among their coworkers for the benefit of their superior, in alleged violation of § 818 of the Oklahoma's Merit System of Personnel Administration Act, challenged the Act's validity on the grounds that two of its paragraphs were overbroad and vague. One of these paragraphs especially provided that no such employee shall belong to 'any national, state or local committee of a political party' or be an officer or member of a committee or a partisan political club, **or a candidate for any paid public office**, or take part in the management or affairs of any political party or campaign 'except to exercise his right as a citizen privately to express his opinion and vote.' The SCOTUS likewise upheld the constitutionality of the assailed Section in the Act, discerning that it restricted the political activities of the State's classified civil servants in much the same manner that the Hatch Act, the challenged Act in *Letter Carriers,* proscribed partisan political activities of federal employees. The SCOTUS thus held:

> Unlike ordinary breach-of-the-peace statutes or other broad regulatory acts, § 818 is directed, by its terms, at political expression which if engaged in by private persons would plainly be protected by the First and Fourteenth Amendments. But at the same time, § 818 is not a censorial statute, directed at particular groups or viewpoints. **The statute, rather, seeks to regulate political activity in an even-handed and neutral manner. As indicted, such statutes have in the past been subject to a less exacting overbreadth scrutiny. Moreover, the fact remains that § 818 regulates a substantial spectrum of conduct that is as manifestly subject to state regulation as the public peace or criminal trespass. This much was established in *United Public Workers v. Mitchell*, and has been unhesitatingly reaffirmed today in *Letter Carriers* x x x. Under the decision in *Letter Carriers*, there is no question that § 818 is valid at least insofar as it forbids classified employees from:** soliciting contributions for partisan candidates, political parties, or other partisan political purposes; becoming members of national, state, or local committees of political parties, or officers or committee members in partisan political clubs, **or candidates for any paid public office**; taking part in the management or affairs of any political party's partisan political campaign; serving as delegates or alternates to caucuses or conventions of political parties; addressing or taking an active part in partisan political rallies or meetings; soliciting votes or assisting voters at the polls or helping in a partisan effort to get voters to the polls; participating in the distribution of partisan campaign literature; initiating or circulating partisan nominating petitions; or riding in caravans for any political party or partisan political candidate.[56] (Emphasis supplied)

Hence, the Court in *Quinto* observed that the SCOTUS in *Letter Carriers* and *Broadrick* declared the assailed provisions in said cases compliant with the equal protection clause:

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[56] Supra note 54, at 616-617.

> x x x [The SCOTUS] held that (i) in regulating the speech of its employees, the state as employer has interests that differ significantly from those it possesses in regulating the speech of the citizenry in general; (ii) the courts must therefore balance the legitimate interest of employee free expression against the interests of the employer in promoting efficiency of public services; (iii) if the employees' expression interferes with the maintenance of efficient and regularly functioning services, the limitation on speech is not unconstitutional; and (iv) the Legislature is to be given some flexibility or latitude in ascertaining which positions are to be covered by any statutory restrictions. Therefore, insofar as government employees are concerned, the correct standard of review is an interest-balancing approach, a means-end scrutiny that examines the closeness of fit between the governmental interests and the prohibitions in question.[57] (Citations omitted)

The Court further observed that following *Letter Carriers* and *Broadrick*, the US First Circuit Court of Appeals in the subsequent case of *Magill v. Lynch*[58] concluded thusly:

> [T]hat the view that political candidacy was a fundamental interest which could be infringed upon only if less restrictive alternatives were not available, was a position which was no longer viable, since the Supreme Court (finding that the government's interest in regulating both the conduct and speech of its employees differed significantly from its interest in regulating those of the citizenry in general) had given little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of Congress, and applying a "balancing" test to determine whether limits on political activity by public employees substantially served government interests which were "important" enough to outweigh the employees' First Amendment rights.[59] (Citation and emphasis omitted, and underscoring supplied)

To be sure, an argument may be made that *Quinto* and the US cases it relied upon were all premised on the legitimate and compelling interest of the State to direct the conduct of its employees in the name of efficient public service. Herein petitioners, who are non-incumbent public servants, evidently do not fall within the State's control or supervision. Notably, however, *Quinto* itself appeared to have acknowledged the general application of the principle laid down in *Letter Carriers* and *Broadrick* when it concluded that "American case law has in fact never recognized a fundamental right to express one's political views through candidacy, as to invoke a rigorous standard of review."[60] One of the relevant US cases *Quinto* cited, at this turn, was *Clements v. Fashing*[61] (*Clements*), where the SCOTUS concluded that candidacy is not a "fundamental right" that itself requires departure from traditional equal protection principles under which state-law classifications need only be drawn in such a manner as to bear some rational relationship to a legitimate state end. In so holding, *Clements*

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57 Supra note 29, at 237-238.
58 560 F.2d 22 (1st Cir. 1977).
59 Supra note 29, at 247.
60 Id. at 253. Citations and emphasis omitted.
61 457 U.S. 957 (1982).

cited *Bullock v. Carter*,[62] where the only issue at hand was the exorbitant primary election fees. *Clements*' incisive discussion thus went on:

> **Far from recognizing candidacy as a "fundamental right," we have held that the existence of barriers to a candidate's access to the ballot "does not, of itself, compel close scrutiny."** "In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters." In assessing challenges to state election laws that restrict access to the ballot, this Court has not formulated a "litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause." Decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions.
>
> Our ballot access cases, however, do focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the "availability of political opportunity." This Court has departed from traditional equal protection analysis in recent years in two essentially separate, although similar, lines of ballot access cases.
>
> One line of ballot access cases involves classifications based on wealth. In invalidating candidate filing-fee provisions, for example, we have departed from traditional equal protection analysis because such a "system falls with unequal weight on voters, as well as candidates, according to their economic status." "Whatever may be the political mood at any given time, our tradition has been one of hospitality toward all candidates without regard to their economic status." Economic status is not a measure of a prospective candidate's qualifications to hold elective office, and a filing fee alone is an inadequate test of whether a candidacy is serious or spurious. Clearly, the challenged provisions in the instant case involve neither filing fees nor restrictions that invidiously burden those of lower economic status. This line of cases, therefore, does not support a departure from the traditional equal protection principles.
>
> The second line of ballot access cases involves classification schemes that impose burdens on new or small political parties or independent candidates. These cases involve requirements that an independent candidate or minor party demonstrate a certain level of support among the electorate before the minor party or candidate may obtain a place on the ballot. In these cases, the Court has emphasized that the States have important interests in protecting the integrity of their political processes from frivolous or fraudulent candidacies, in ensuring that their election processes are efficient, in avoiding voter confusion caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections. To this end, the Court has upheld reasonable level-of-support requirements and classifications that turn on the political party's success in prior elections. The Court has recognized, however, that such requirements may burden First Amendment interests in ensuring freedom of association, as these requirements classify on the basis of a candidate's association with particular political parties. Consequently, the State may

[62] 405 U.S. 134 (1972).

> not act to maintain the "*status quo*" by making it virtually impossible for any but the two major parties to achieve ballot positions for their candidates.
>
> The provisions of the Texas Constitution challenged in this case do not contain any classification that imposes special burdens on minority political parties or independent candidates. The burdens placed on those candidates subject to § 19 and § 65 in no way depend upon political affiliation or political viewpoint.
>
> It does not automatically follow, of course, that we must apply traditional equal protection principles in examining § 19 and § 65 merely because these restrictions on candidacy do not fall into the two patterns just described. But this fact does counsel against discarding traditional principles without first examining the nature of the interests that are affected and the extent of the burden these provisions place on candidacy. **Not all ballot access restrictions require "heightened" equal protection scrutiny.** The Court, for example, applied traditional equal protection principles to uphold a classification scheme that denied absentee ballots to inmates in jail awaiting trial. **Thus, it is necessary to examine the provisions in question in terms of the extent of the burdens that they place on the candidacy of current holders of public office.**[63] (Emphasis supplied, and citations omitted)

Verily, the foregoing shows that the right to run or be voted for public office is neither an explicit nor implicit fundamental right or liberty guaranteed by the Constitution. As such, using the rational basis test against the assailed provisions in this case, what the Court should only be mindful of, are whether (1) the provisions carry a legitimate government interest and (2) whether there is a reasonable connection between such governmental interest and the means employed to achieve it, *i.e.*, making distinctions between different sets of candidates.[64]

There is no rational basis for the prohibition under the assailed provisions nor is it reasonably connected to the policy behind the party-list system.

Although the assailed provisions demand the application only of the rational basis test in determining their reasonableness, being that the right to run for public office is not constitutionally-guaranteed, I concur that the law and rules challenged do not pass this test.

A careful understanding of the case shows that petitioners' equal protection challenge is double-layered: *First*, petitioners assail the distinction made between party-list representatives and district representatives in that the prohibition under the assailed provisions only apply to the former and not to the latter. *Second*, they challenge the

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[63] Supra note 61, at 963-966.

[64] *Zomer Development Company, Inc. v. Special Twentieth Division of the CA, Cebu City*, supra note 17, at 137.

distinction made within the class of party-list nominees, specifically between nominees who lost in the previous elections and those who won or did not participate therein.

The first challenge – that the assailed provisions only apply to party-list representatives and not to district representatives – is already answered sufficiently by Section 5(1). They cannot apply to district representatives precisely because the Constitution, *via* Section 5(1), allows legislation of additional qualifications only as to party-list representatives. Pursuant to *SJS*, the Congress cannot add to the qualifications for national elective positions enumerated in the Constitution, including those for district representatives.

However, as to the second layer — distinguishing between party-list nominees who failed to win in the prior election and those who won or did not participate therein — there appears to be no rational basis and no connection between singling out such political losers and the policy behind the party-list system. Indeed, a closer look at the Congressional deliberations and a deeper appreciation of the policy behind the party-list system of representation as envisioned by the framers of the 1987 Constitution shows that the prohibition under Section 8 of RA 7941, and consequently its implementing rules under COMELEC Resolution No. 10717, lacks any rational basis and is inconsistent with the legitimate government interest behind the party-list system.

Section 2 of RA 7941 embodies the policy behind the party list system of representation, thus:

> Sec. 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 the 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.** Towards this end, 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. (Emphasis supplied)

Hence, the intent behind the law is evident, *i.e.*, to enhance the chances of Filipinos belonging to marginalized and underrepresented sectors, organizations, and parties and those who lack well-defined political constituencies to compete for and win seats in the legislature.

In *Atong Paglaum, Inc. v. COMELEC*[65] (*Atong Paglaum*), the Court pronounced that the party-list system under the 1987 Constitution is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the HOR. In line with this intent, the Court adopted a broad construction of the law, ruling that the system embraces both sectoral and non-sectoral parties, that "marginalized and underrepresented" includes those who are such along economic as well as ideological lines, and that even major political parties may participate through their sectoral wings. In the end, *Atong Paglaum*, consistent with the policy of attaining the widest representation for the marginalized and underrepresented who cannot compete in the district elections, substantially expanded the guidelines laid down in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*[66] and *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC.*[67] The Court ruled:

> The 1987 Constitution provides the basis for the party-list system of representation. Simply put, the party-list system is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the [HOR]. x x x
>
> x x x x
>
> Indisputably, the framers of the 1987 Constitution intended the party-list system to include not only sectoral parties but also non-sectoral parties. The framers intended the sectoral parties to constitute a part, but not the entirety, of the party-list system. x x x
>
> x x x x
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> The common denominator between sectoral and non-sectoral parties is that they cannot expect to win in legislative district elections but they can garner, in nationwide elections, at least the same number of votes that winning candidates can garner in legislative district elections. The party-list system will be the entry point to membership in the [HOR] for both these non-traditional parties that could not compete in legislative district elections.
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> x x x x
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> This interpretation will harmonize the 1987 Constitution and [RA] 7941 and will give rise to a multi-party system where those "marginalized and underrepresented," ***both in economic and ideological status***, will have the opportunity to send their own members to the [HOR]. This interpretation will also make the party-list system honest and transparent, eliminating the need for relatively well-off party-list representatives to masquerade as "wallowing in poverty, destitution and infirmity," even as they attend sessions in Congress riding in SUVs.
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> x x x x

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[65] 707 Phil. 454 (2013).
[66] 412 Phil. 308 (2001).
[67] 604 Phil. 131 (2009).

> The 1987 Constitution and R.A. No. 7941 allow major political parties to participate in party-list elections so as to encourage them to work assiduously in extending their constituencies to the "marginalized and underrepresented" and to those who "lack well-defined political constituencies." The participation of major political parties in party-list elections must be geared towards the entry, as members of the [HOR], of the "marginalized and underrepresented" and those who "lack well-defined political constituencies," giving them a voice in law-making. Thus, to participate in party-list elections, a major political party that fields candidates in the legislative district elections must organize a sectoral wing, like a labor, peasant, fisherfolk, urban poor, professional, women or youth wing, that can register under the party-list system.
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> x x x x
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> We cannot, however, fault the COMELEC for following prevailing jurisprudence in disqualifying petitioners. In following prevailing jurisprudence, the COMELEC could not have committed grave abuse of discretion. However, for the coming 13 May 2013 party-list elections, we must now impose and mandate the party-list system **actually envisioned and authorized** under the 1987 Constitution and [RA] 7941. In *BANAT*, this Court devised a new formula in the allocation of party-list seats, reversing the COMELEC's allocation which followed the then prevailing formula in *Ang Bagong Bayani*. In *BANAT*, however, the Court did not declare that the COMELEC committed grave abuse of discretion. Similarly, even as we acknowledge here that the COMELEC did not commit grave abuse of discretion, we declare that it would not be in accord with the 1987 Constitution and [RA] 7941 to apply the criteria in *Ang Bagong Bayani* and *BANAT* in determining who are qualified to participate **in the coming 13 May 2013 party-list elections**. For this purpose, we suspend our rule that a party may appeal to this Court from decisions or orders of the COMELEC only if the COMELEC committed grave abuse of discretion.[68] (Citations omitted, and emphasis and italics in the original)

Section 2 of RA No. 7941 and *Atong Paglaum* are clear as to the policy behind the party-list representation – according as much political opportunity to the ideologically and economically marginalized or underrepresented because they could not otherwise reasonably compete in the district elections. In this regard, excluding defeated candidates in the previous elections from the party-list system does not further this policy. On the contrary, historically, failure in the elections has been attributed to economic disadvantages and lack of strong political bases. It appears that these are precisely the influences that the party-list system seeks to diminish, so that those who are traditionally disadvantaged in politics for being marginalized and underrepresented can have a real chance at becoming a legislator.

I agree with the *ponencia* that a prohibition on candidates from becoming a party-list nominee in the *same* elections is more in keeping with the purported basis of Section 8 of RA 7941 of preventing the abuse of the

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[68] Supra note 65, at 528, 534-535, 536, 544, 545-546, and 549-550.

party-list system by treating the same as a fallback for losing candidates.[69] Apart from the intent of both houses of Congress in passing the law,[70] this is consistent with Section 73 of the OEC which prohibits the filing of CoCs for more than one position in the same elections, thus:

> **Sec. 73. Certificate of candidacy.** – No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.
>
> A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.
>
> **No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them.** However, before the expiration of the period for the filing of certificates of candidacy, the person who was filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.
>
> The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. (Emphasis supplied)

Notably, Section 73 refers to a candidate who "files his certificate of candidacy for more than one office" who then "shall not be eligible for any of them." Given the language of Section 73, one can argue that it does not apply to a candidate who is likewise a party-list nominee. To recall, a party-list nominee does not file a CoC. Instead, under COMELEC Resolution No. 10717, the nominating sectoral party, organization or coalition is required to file a Certificate of Nomination which lists, among others, the names of its nominees, while the nominee is required to file a corresponding Certificate of Acceptance of Nomination.[71]

Moreover, the OEC was enacted on December 3, 1985 whereas the party-list system was introduced under the 1987 Constitution. In other words, the Congress, in passing the OEC, had not contemplated the party-list system of representation.

Hence, there presently appears to be no express legal prohibition against candidates for an elective position from becoming, in the same elections, a nominee for a party, organization or coalition. This supports the theory that the intention of the legislature was, in fact, to pass a law embodying such prohibition instead of Section 8 as presently worded. The evil of using the party-list system as a "backdoor" for the rich and powerful is certainly greater in the case of a candidate who is simultaneously a party-

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[69] *Ponencia*, pp. 20-22.
[70] Id. at 22-23.
[71] See COMELEC Resolution No. 10717, Sections 4 to 6.

list nominee than one who lost a bid in the prior elections and is trying his or her luck again, this time as a party-list nominee.

The party-list system is a significant innovation of the present Constitution in the composition of the members of the HOR. The system is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the HOR.[72] Significantly, the participation of any national, regional, and sectoral parties in party-list elections must be geared towards the entry, as member of the HOR, of the "marginalized and underrepresented" and those who "lack well-defined political constituencies," giving them a voice in law-making.[73]

Equally important, a party-list nominee must be a *bona fide* member of the party or organization which he or she seeks to represent. In the case of sectoral parties, to be a *bona fide* party-list nominee one must either belong to the sector represented, or have a track record of advocacy for such sector.[74]

Hence, given the nature and noble objectives of the party-list system, it is, indeed, imperative that the misuse of the system be seriously guarded against. Indeed, the party-list system has been criticized as having evolved into a backdoor for the rich and powerful to further entrench themselves in Congress.[75] Local officials affected by term limits are, in particular, criticized for using the party-list system to wield power and influence as they prepare to regain their position in the next election cycle.[76]

However, I fail to appreciate how the assailed provisions guard against these possible abuses. For instance, local officials who become party-list nominees in the meantime that the three-term limit prohibits them from running for their customary local positions are necessarily victors in the previous elections. Hence, they will not be prevented by the prohibition on political losers under the assailed provisions from exploiting the party-list system. The distinction created palpably fails to advance any legitimate governmental interest.

In sum, I agree that Congress is empowered by Section 5(1) to provide for disqualifications of party-list nominees. However, such legislation is subject to basic constitutional limitations, including the equal protection clause. In determining the reasonableness of a classification made by a law enacted pursuant to Section 5(1) such as the assailed provisions, the rational basis test applies because the right to seek public office is not a fundamental right. Applying this test in the present case, the assailed provisions fail to demonstrate any rational basis to support it. In fact, its

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72 *Atong Paglaum, Inc. v. COMELEC*, supra note 65, at 528.
73 Id.
74 Id. at 546. Emphasis omitted.
75 *Bastardizing the party-list system*, Atty. Dennis Gorecho, *Business Mirror*, April 7, 2022; <https://businessmirror.com.ph/2022/04/07/bastardizing-the-party-list-system/>, last accessed on August 7, 2022.
76 Id.

discrimination against losing candidates of the immediately preceding election clearly offends the policy behind the party-list system of attaining the broadest possible representation for the marginalized, underrepresented and those without well-defined political constituencies. As such, the assailed provisions are unconstitutional for violating the equal protection clause under the 1987 Constitution.

In view of the foregoing, I vote to grant the Consolidated Petitions and to declare the assailed provisions unconstitutional.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice