EN BANC

G.R. No. 257610 – GLEN QUINTOS ALBANO, *Petitioner v.* **COMMISSION ON ELECTIONS,** *Respondent.*

UDK 17230 – CATALINA G. LEONEN-PIZARRO, *Petitioner v.* **COMMISSION ON ELECTIONS,** *Respondent.*

Promulgated:

January 24, 2023

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DISSENT

LAZARO-JAVIER, *J.*:

I vote to sustain the constitutionality of the pertinent portion of Section 8, Republic Act No. 7941 (1995), *The Party-List System Act*, *viz.*:

> SECTION 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.**
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One. Generally, controversies involving equal protection right center on **two primary questions**.

The **first** is *how far, or in relation to what rights, does the command of equality intend to apply?* We ask, *equal as to what*, or *what rights are we all supposed to be equal at? Does it entail any or all of civil, political, social, or economic equality?* For instance, if my neighbor earns more than I do because the government prescribed wage rate allows this individual to earn more than I would ever in my lifetime, would the equal protection right compel economic equality between us?

The **second** is *what does it mean to treat persons equally?* In other words, *what is equal treatment?* In the same illustration, supposing I am entitled to be economically equal with my neighbor, that is, we ought to have economic equality, how would this equal treatment be achieved? Must the neighbor's pay be reduced, or should mine be increased, or do I get other perks to compensate for the inequality?

In our legal system, the **main test** for deciding these and other equal protection challenges is:

> The equal protection clause means that **no person** or **class of persons** shall be deprived of the **same protection** of laws **enjoyed by other persons** or other classes in the **same place** in **like circumstances**. Thus, the guarantee of the equal protection of laws is **not violated** if there is **reasonable classification**. It must be shown, therefore, that the **classification** (1) rests on **substantial distinctions**; (2) is **germane to the purpose** of the law; (3) is **not limited to existing conditions** only; and (4) **applies equally to all members** of the same class.[1]

Under this test, the scope of equal protection is as broad as any governmental action. The command to treat persons equally extends to **all actions** by the government. Thus, as expressed in the test, our concept of the equal protection right is that it is **not *per se*** an **anti-discrimination** rule *though* it **encompasses anti-discrimination** as well. Thus, in *Sameer Overseas Placement Agency Inc. v. Cabiles*,[2] the Court said:

> Equal protection of the law is a guarantee that persons under like circumstances and falling within the same class are treated alike, in terms of "privileges conferred and liabilities enforced." It is a guarantee against "undue favor and individual or class privilege, **as well as hostile discrimination or the oppression of inequality**."

By **discrimination**, I mean **treating someone differently** based on **specific characteristics** protected by law, where this **treatment has a negative effect** on that person. This has been generally referred to as **suspect classifications**.

Examples of these **characteristics** include *ancestry* (including color and perceived race); *nationality* or *national origin*; *religion* or *creed*; *ethnic background* or *origin*; *age*; *sex* (including sex-determined characteristics such as pregnancy); *gender identity*; *sexual orientation*; *marital* or *family status*;

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1 *Securities and Exchange Commission v. Commission on Audit*, G.R. No. 252198, April 27, 2021 [Per *J.* Lazaro-Javier, *En Banc*].

2 740 Phil. 403, 434 (2014) [Per *J.* Leonen, *En Banc*].

source and *level of income*; *political belief*; *physical* or *mental disability*; *social* or *historical disadvantage*; and *other characteristics subjected to prejudice* or *group stereotypes*, such as criminal record.

Prejudicial treatment, when based on those **specific characteristics**, is considered **discrimination**, as is **failing to reasonably accommodate** the special needs of a person or group. Often, individuals or classes having these specific characteristics are **accorded special protection by our *Constitution***.[3] Discrimination is prohibited by law because it **offends the dignity** of a person.

Under our **main test**, as indicated by its use of the phrase **reasonable classification**, the standard analysis of equal protection challenges has followed the **rational basis test**. This is coupled with a **deferential attitude** to legislative classifications and a **reluctance to invalidate** a law. The **exception** is where there is a **showing of a clear and unequivocal breach of the *Constitution***.[4]

But *Samahan ng mga Progresibong Kabataan v. Quezon City*,[5] *Serrano v. Gallant Maritime Services Inc.*,[6] *White Light Corporation v. City of Manila*,[7] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[8] among others, carved out an **exception to this general rule**, such that prejudice to **persons accorded special protection by the *Constitution*** requires **stricter judicial scrutiny** than mere rationality. The Court referred to it as a **strict scrutiny** of the classifications to determine if they do or do not rest on any real or substantial distinctions that would justify different treatments. This standard and its overarching analytical framework were developed in American jurisprudence in accordance with its historical and state interests in mind.

The above strict scrutiny standard and its overarching analysis were **not** followed in some of the subsequent cases.[9] *Sameer Overseas Placement Agency Inc.*[10] appears to have abandoned this line of analysis in *Serrano* when the former, despite citing the latter, held:

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3 See e.g., *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per *J.* Puno, *En Banc*].; *Serrano v. Gallant Maritime Services Inc.*, 601 Phil. 245 (2009) [Per *J.* Austia-Martinez, *En Banc*].

4 *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, supra.

5 815 Phil. 1067 (2017) [Per *J.* Perlas-Bernabe, *En Banc*].

6 601 Phil. 245 (2009) [Per *J.* Austia-Martinez, *En Banc*].

7 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

8 Supra note 4.

9 See e.g., *Disini v. Secretary of Justice*, 727 Phil. 28 (2014) [Per *J.* Abad, *En Banc*].; *Sameer Overseas Placement Agency Inc. v. Cabiles*, supra.

10 Supra note 2, at 437.

> We **do not need strict scrutiny to conclude** that these classifications do not rest on any real or substantial distinctions that would justify different treatments in terms of the computation of money claims resulting from illegal termination.

Disini v. Secretary of Justice[11] did not also see the need to apply strict scrutiny since no suspect classifications were involved, and more tellingly, **universally condemnable act or conduct** was targeted and therefore should be immediately classified and quarantined for being such.

I perceive some well-meaning reluctance to accept the strict scrutiny standard and its overarching analysis because of its alien overtures that may not befit our own values and circumstances. Further, it appears to be **intuitive** to accept the **rational basis test** as our **sole main test** for equal protection. The reason is that its premise of **invalidating classifications** that **clearly** and **unequivocally breach** the *Constitution* is a **simple reiteration** of the fundamental and straightforward legal doctrine that the *Constitution* is the supreme law and anything that violates it is void. This choice of the rational basis test **does away** with the confusing *nuanced* and *tiered tests* in American jurisprudence on equal protection.

Under the **rational basis test**, we determine whether the **classification** is **reasonable**. To do this, we must establish:

- Is there a **legitimate government interest** behind the classification?
- Is the **classification rationally related to this legitimate government interest**?[12]

If the answer is yes to both questions, we must then **inform** the reasons for the affirmative answers with responses to: (i) whether there are **substantial** distinctions between or among the classes; (ii) whether the classification is **germane** to the purpose of the law, **not limited** to existing conditions, and **applies equally** to all members of the same class; and (iii) whether the classification **clearly** and **unequivocally breaches** the *Constitution*. These **questions** constitute the **rational basis test**. The **affirmative answers to these questions** in turn constitute the hallmarks of a **reasonable classification**.

In this test, there is generally little second-guessing as to *whether the law works*. The *analysis of alternatives* is irrelevant. The **starting point** is that the law that imposes the classification is **presumptively**

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11 727 Phil. 28 (2014).
12 *Lagman v. Ochoa*, G.R. No. 197422, November 3, 2020 [Per *J.* Leonen, *En Banc*].

constitutional. The burden is on the complaining party to show that the **only purpose** of the legislation was *entirely arbitrary*, *irrational*, or *invidiously discriminatory*.

Here, the underlying classification in the assailed portion of Section 8, Republic Act No. 7941 has **nothing to do** with discriminatory or suspect classifications. **No** persons especially accorded protection by the *Constitution* are involved. The classification **does not distinguish** between **historically** or **socially disadvantaged** individuals or groups or others whose **immutable characteristics** are subjected to prejudice or group stereotypes, on one hand, *and* **normal** persons, on the other. Hence, the **appropriate standard of review** for Section 8 is the **rational basis test**.

Two. It is obvious from the test of equal protection that **comparison** plays a role throughout the equal protection guarantee. **Equality** is a **comparative** concept, the condition of which may only be attained or discerned **by comparison** with the condition of others. This basic right requires an **inherently comparative analysis**. Thus, the **threshold** is to **determine** that one group is **unequally treated** as against another. When we say unequal treatment, however, we mean **substantive equality** as opposed to **formal equality**. There is no greater inequality than the equal treatment of unequals. Ironically, it is unfair and bad law to treat everyone equally because not everyone is equal.

Critical in every equal protection analysis is the **identification** of the **proper comparator groups**. A court must **identify differential treatment** as compared to one or more other persons or groups. These are the ones against whom the **classified group** in the assailed law is **measured** against. Locating the **appropriate comparator** is **necessary** in identifying **differential** treatment. To **establish** that indeed a **classification** has been made by the assailed law, we ask:

- Does the challenged provision, *on its face* or *in its impact* (*i.e.*, since the equal protection right may be infringed not only by the legislation itself, but by the actions of a delegated decision-maker applying it), **create a distinction**? and,
- If so, does the distinction **impose burdens** or **deny a benefit**?

This threshold **distinction** or **classification stage** of the analysis should immediately bar claims that are not intended to be prohibited by the equal protection right because **no classifications** have actually been made.

Caution must be taken in this stage of analysis – this means that the analysis must examine every **contextual impact of intersecting grounds of differential treatment**. In this stage, we must **account for adverse consequences** of the assailed law. This is done to determine whether indeed the assailed law establishes a **classification** and whether this **classification** truly imposes a burden or denies a benefit.

From the **threshold test** of distinctions and classifications and moving forward to the **main test** of equal protection, to arrive at whether the impugned law infringes the equal protection guarantee, it must be **viewed as a whole**. What is required is an **approach** that takes account of the **full context** of the **claimant group's situation**. That context will include the **legislative, political** and **social contexts** as well as the **actual impact** of the law on that situation.

More, we must also examine the **object of the assailed law** in the context of its broader legislative scheme, taking into account the **universe of potential beneficiaries** *vis-à-vis* the **universe of potentially encumbered or disadvantaged targets**. A law **must necessarily draw distinctions** to achieve **certain policy goals** while **properly allocating resources** or **opportunities**.

What must be asked is whether the **purpose of the assailed law** corresponds to the **needs of the claimant groups** when considered in the context of the whole scheme, or **does it force them to carry a burden** that others do not? The analysis is contextual, not formalistic, grounded in the actual situation of the group and the potential of the impugned law to worsen their situation.

Three. The assailed provision is a part of Section 8 and specifically states: "Nomination of Party-List Representatives.... 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**...."

Applying the test of equal protection to this assailed provision, I note the following **comparator groups**:

1. **Candidates of any elective office** running in the current elections *vis-à-vis* **nominees** of party-list organizations running in the current elections.

2. **Political parties of candidates** and **candidates themselves of any elective office** running in the current elections *vis-à-vis* **registered party-list organization** or **coalition** running in the current elections.

3. **Winning candidates** of any elective post in the **immediately preceding elections** *vis-à-vis* **losing candidates** of any elective post in the **immediately preceding elections.**

Threshold Test

First, does the challenged provision, *on its face* or *in its impact* (i.e., since the equal protection right may be infringed not only by the legislation itself, but by the actions of a delegated decision-maker applying it), **create a distinction**?

The answer is yes.

Candidates of any elective office running in the current elections *are treated differently from* **nominees** of party-list organizations running in the current elections. **Candidates** do **not lose** their **status** as **candidates**, or they are **not disqualified** as candidates in the current elections, *though* they are **included as nominees** of a party-list organization or **lost in the immediately preceding** elections. **Nominees lose** their **status** as **nominees** if they are candidates in the current elections or were candidates who lost in the immediately preceding elections.

Political parties of candidates and **candidates themselves of any elective office** running in the current elections *are treated differently from* **registered party-list organizations** or **coalitions** running in the current elections. **Political parties** are **not burdened** by the rules under the assailed portion of Section 8, while **registered party-list organizations** or **coalitions** are. The same *differential treatment* exists between the **candidates** themselves of any other elective office and every **registered party-list organization** or **coalition.** The assailed portion of Section 8 applies only to the latter.

Winning candidates of any elective post in the **immediately preceding elections** *are treated differently from* **losing candidates** of any elective post in the **immediately preceding elections**, in that the former **qualify** as **nominees** of party-list organizations running in the current elections **while** the latter **do not qualify** as such nominees.

Second, does the distinction **impose burdens** or **deny a benefit**?

The answer is yes. There are **burdens** imposed upon **nominees** of party-list organizations running in the current elections, **registered party-list organizations** or **coalitions** running in the current elections, and **losing candidates** of any elective post in the **immediately preceding elections**.

Rational Basis Test

Is there a **legitimate government interest** behind the classification?

The answer is yes. As the *ponencia* admits, the legitimate government interest is **to protect the integrity of the party-list system** of electing representatives by **disallowing** or **discouraging** the **traditional** elective officials from **crowding**, **monopolizing** or **abusing** the party-list system of representation to perpetuate themselves in power. It may also be said that the legitimate government interest is **to prevent traditional politicians** from **abusing** the party-list system as a **backdoor** to **entrench** themselves in power, thereby **defeating** the **purpose** of the party-list system as a means to give legislative voice to the marginalized and underrepresented sectors of our country.

Is the **classification rationally related to this legitimate government interest**?

The answer is also yes. By **placing** an **embargo** upon the **qualifications** of **nominees** of party-list organizations that are **not imposed** upon **political parties** of candidates of other elective offices and **candidates** themselves of other elective offices, and by treating **losing candidates** in the **immediately preceding elections** from **winning candidates** of the same elections, the assailed provision is **able to limit**, **discourage** or **disallow** the **abuse** of the party-list system as a **backdoor** for these **traditional** politicians. The objective is also **to promote** and **strengthen** the **capacities** of **organizations** who have **no machinery** to match those candidates in other elective posts, to have voices in and bring their platforms to Congress. The classifications may be **under-inclusive** but they are **nonetheless reasonably related** to the government interest articulated above.

In this regard, there are **substantial distinctions** between **political parties** of candidates of any other elective offices and **candidates themselves** of any other elective offices running in the current elections *and* **registered party-list organization** or **coalition** and **nominees** of party-list organizations running in the current elections, and between **winning**

candidates of any elective post in the **immediately preceding elections** *and* **losing candidates** of any elective post in the **immediately preceding elections**. These **substantial distinctions** make for a **reasonable relation** between these **classifications** and the **legitimate government interest**.

Candidates are the ones being voted into office. **Nominees** are not candidates – they are **not voted into office**. So are the **political parties** of candidates in other elective offices. But in a party-list system, the **candidates** are the **party-list organizations**. The **nominees** are intended to be the **mere agents** of the candidate party-list organization. Even in victory, while **candidates** hold a piece of the sovereignty by their election to office, neither the **political party** nor the **nominees** wield this piece of the sovereignty since for the **nominees** it is their principal, the **registered party-list organization** or **coalition**, that does carry this piece of the sovereignty.

Losing candidates in the *immediately preceding elections* are **different** from **winning candidates** in the *immediately preceding elections* in that they have the slightest probability of winning in the **traditional** elective posts. Hence, the **attraction** and **temptation** to test the party-list system would be stronger among these **losing candidates** than it would be for **winning candidates**. The idea is **to avoid** the party-list system from **becoming a dumping ground** of losers in the traditional elective posts and **usurping** the party-list system to regain power when this system is supposed to have the marginalized and underrepresented in mind as beneficiaries.

The classifications are **germane** to the purpose of the assailed portion of Section 8. They are **not alien** to it. They are **reasonably tailored** to achieve the legitimate government interest mentioned above. The classifications too are **not limited** to existing conditions. They are **perpetually imposed** so long as Section 8 is in effect. They also **apply equally** to all members of the same class – **each registered party-list organization** or **coalition, all party-list nominees** and **all losing candidates** in the **immediately preceding elections**.

Contextual impact of intersecting grounds of differential treatment and adverse consequences

Nominees of party-list organizations running in the current elections and **losing candidates** for any elective post in the **immediately preceding elections** have **no** *social* or *historical disadvantage* or *other characteristics subjected to prejudice* or *group stereotypes*. By **imposing an added burden** of **additional qualifications** or **grounds of disqualification** upon them, *not otherwise imposed on candidates in elective offices running in the current*

elections and winning candidates in the immediately preceding elections, we are **not perpetuating** any social or historical disadvantage; neither are we subjecting them to prejudice or group stereotypes – simply **because** there is **no contextual impact of intersecting grounds of differential treatment**, and **adverse consequences** upon them. Nominees and losing candidates were **never before** prejudiced or disadvantaged; the assailed portion of Section 8 does **not** make them now.

Registered party-list organizations or **coalitions** may have had experienced *social* or *historical disadvantage* or *other characteristics subjected to prejudice* or *group stereotypes*. They represent, if not themselves are, **marginalized** and **underrepresented** causes and constituencies. It was **precisely for this reason** that the party-list system was put into place.

But the assailed portion of Section 8 **does not aggravate** or **perpetuate** these social or historical disadvantages, prejudice or stereotypes. On the contrary, the **purpose** of the assailed portion of Section 8 **corresponds** exactly to the **needs of the claimant groups** (i.e., registered party-list organizations or coalitions, nominees and losing candidates) when considered in the **context of the whole scheme**. While this provision **does force them to carry a burden** that others do not, the **burden** is **necessary** and **reasonably related** to **protect** and **promote** the **integrity** of the **party-list system** and the **party-list organizations** themselves that are essentially the **intended beneficiaries** of **Republic Act No. 7941**.

No clear and unequivocal breach of the Constitution

The **claimant groups** in the assailed portion of Section 8 are **not especially accorded protection** by the *Constitution*. This classification is **not** even **mentioned** in the *Constitution*. They are purely statutory constructs pursuant to Section 5 (1) and (2)[13] of the *Constitution*. The imposition of burdens upon them not shared with others is in fact authorized by the aforementioned constitutional provisions.

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13 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.

Conclusion

To conclude, the assailed portion of Section 8 has the hallmarks of a **reasonable classification**.

Four. In accordance with the **distinction** between **candidates** and party-list **nominees**, petitioners have **no standing** to commence this judicial review. The **nominees** do **not** have the **right** to nominate themselves. The right belongs to the **party-list organizations**. Section 5 (1) of the *Constitution* speaks of the "party-list system **of registered national, regional, and sectoral parties or organizations.**" Section 8 of Republic Act No. 7941 identifies the **right-holder** to **nominate** as **each of the registered party, organization** or **coalition**:

> 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 **nominees** are **mere persons**. They are the objects of the decision-making done by each registered party, organization or coalition. They have **no rights** except the **right to consent** to the nomination. But the **nomination right** itself does **not** belong to the **nominee**. The nominees hold **no right to be nominated**.

Here, the **equal protection challenge** to the assailed portion of Section 8 **properly belongs** to **registered party-list organizations** or **coalitions** since it is ***their*** **right to nominate** that is alleged to have been infringed by the classification that is **not imposed** upon the other **comparator groups**. Petitioners have **no standing** to bring this suit since **they have not been injured** by the assailed provision or more precisely the **reasonable classification** made therein. Hence, I **cannot agree** to grant relief to petitioners.

Five. We **cannot allow** the Court to be Congress' carte-blanche supervisor when it comes to what are **reasonable classifications**. It is in the nature of things that **all laws classify**, and **all laws make distinctions**, leading to a **virtually unlimited** number of potential equal protection challenges. **Close judicial review** of all classifications to ensure equal protection of the laws is a **practical impossibility**. Although the clause protects all persons, the Court, as a **practical** matter, **cannot give close scrutiny** to all classifications that governmental action may create among persons.

Thus, so long as the classification has a **rational basis** in relation to a **legitimate government objective**, and the complainant is not able to show that the **only purpose** of the legislation was *entirely arbitrary*, *irrational*, or *invidiously discriminatory*, the Court cannot second-guess Congress as to what the proper allocation of resources, opportunities, burdens and obligations and the proper classification of the universes of beneficiaries and burdened targets, should be. This rule is mandated by the doctrine of separation of powers. Congress **enacts policies** into **binding** legal orders and **policies** necessarily imply **making choices**. The Court has to respect this role of Congress, **even if** the **allocation** and **classification** are on hindsight believed by us to be **imperfect** or **under-inclusive**.

ALL TOLD, I vote to **DENY** the Petitions for *Certiorari* and Prohibition and **confirm** the constitutionality of the assailed portion of Section 8 of Republic Act No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717.

AMY C. LAZARO-JAVIER
Associate Justice