

EN BANC

G.R. No. 225198: GABRIELA WOMEN'S PARTY, represented by its National Chairperson, HON. EMERENCIANA A. DE JESUS, Petitioner, v. COMMISSION ON ELECTIONS, Respondent.

Promulgated:

February 7, 2017

X-----*Alfredo Limon Jr.*-----X

SEPARATE CONCURRING OPINION

LEONEN, J.:

I agree that the Gabriela Women's Party (Gabriela) committed forum shopping by filing the Petition for Certiorari while its Omnibus Motion was still pending before the Commission on Elections *En Banc*. Thus, its Petition should be dismissed.

Nevertheless, I wish to offer a few thoughts on the issue of computation of additional seats of party-list members to the House of Representatives.

Article VI, Section 5(2) of the Constitution provides that party-list representatives shall constitute 20% of the total membership of the House of Representatives. The provision reads:

SECTION 5.

....

(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.

Republic Act No. 7941¹ provides for the allocation of the number of seats to be given for every party-list group that garnered the highest number of votes and the procedure for its allocation. Sections 11 and 12 of the law provide:

¹ Party-List System Act (1995).



Section 11. Number of Party-List Representatives. – The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

For purposes of the May 1988 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

In determining the allocation of seats for the second vote, the following procedure shall be observed:

- a. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
- b. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, that those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the proportion to their total number of votes: provided, finally, that each party, organization, or coalition shall be entitled to not more than three (3) seats.

Section 12. Procedure in Allocating Seats for Party-List Representatives. – The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the total nationwide votes cast for the party-list system.

To aid in the computation of the seats available to party-list representatives, this Court provided a formula in *Veterans Federation Party v. Commission on Elections*,² which was reiterated in *BANAT v. Commission on Elections*:³

$$\frac{\text{Number of seats available to legislative districts}}{\phantom{\text{Number of seats available to legislative districts}}} \times 0.20 = \text{Number of seats available to party-list representatives}$$

0.80

This formula, however, was not meant to defeat the spirit and intent of the Constitution and Republic Act No. 7941. Nor was it meant to deprive a party-list group of the correct number of seats to which it is entitled.

² 396 Phil. 419 (2000) [Per J. Panganiban, En Banc].

³ 604 Phil. 131, 152 (2009) [Per J. Carpio, En Banc].

The *ponencia* correctly states that there are two (2) rounds of computation to be made to determine the allocation of seats.⁴ The first round determines the maximum number of seats to be allocated to party-list representatives using the formula above.

In *BANAT*, there were only 220 total legislative seats available;⁵ thus, the formula was able to yield a whole number rather than a fractional number:

$$\frac{220}{0.80} \times 0.20 = 55$$

The issue in *BANAT* centered on how the *additional* seats were to be allocated, that is, how to interpret Sections 11 and 12 of Republic Act No. 7941.⁶ This Court interpreted the formula as:⁷

$\frac{\text{Votes for a party-list group}}{\text{Total number of votes cast for party-list groups}}$	x	$\left(\begin{array}{l} \text{seats available for party-list groups} \\ \text{– guaranteed seats of the party-list groups} \\ \text{able to garner 2\% of the total number of votes} \end{array} \right)$	=	$\text{integer of the product (party's share in the remaining available seats)}$
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Considering that the integer would inevitably yield a fractional number, this Court in *BANAT* stated that “[f]ractional seats are disregarded in the absence of a provision in R[epublic] A[ct] No. 7941 allowing for a rounding off of fractional seats.”⁸ However, this was a reference to fractional numbers yielded *after* the additional seats are computed.

Here, the first round of computations already yielded a fractional number since there are 238 available legislative seats. Using the *Veterans* formula, the maximum number of seats available is 59.5:

$$\frac{238}{0.80} \times 0.20 = 59.5$$

As referred to in Article VI, Section 5(2) of the Constitution, this number represents the 20% allocation to party-list groups in the House of Representatives. In subtracting 0.5 from this amount, this Court would grant party-list groups *less* than what the Constitution actually provides.

⁴ Ponencia, pp. 9–10.

⁵ *BANAT v. Commission on Elections*, 604 Phil. 131, 152 (2009) [Per J. Carpio, En Banc].

⁶ Id.

⁷ Id. at 163.

⁸ Id.

In the 2016 Elections, Gabriela garnered 1,367,795 votes, or 4.2245% of the total number of votes cast.⁹ Twelve (12) party-list groups were able to garner two percent (2%) of the total votes cast. Using 59 seats to compute for their additional seats would yield only 1.98 seats:

$$\begin{aligned} 4.2245\% \times (59 - 12) &= 1.985515 \\ &\text{or} \\ 4.2245\% \times 47 &= 1.985515 \end{aligned}$$

Using 59.5 seats, however, to compute for Gabriela's additional seats would yield 2.006 seats:

$$\begin{aligned} 4.2245\% \times (59.5 - 12) &= 2.0066375 \\ &\text{or} \\ 4.2245\% \times 47.5 &= 2.0066375 \end{aligned}$$

The difference between these two computations is significant. Consistent with *BANAT*, the first computation would only allow for one (1) additional seat since there is no 0.98 of a legislative seat. The same principle would apply for the second computation above. Only two (2) additional seats would be granted because there is no 0.006 of a legislative seat.

Rounding off or rounding down fractional amounts even before the computations have been finished, manipulates the results of what should be a definite mathematical equation. Providing inaccurate variables results in an inaccurate total.

Disregarding fractional amounts in the first round of computation, that is, in computing the maximum number of available seats, would yield less than what is constitutionally provided for. In my opinion, disregarding fractional numbers *only after* computing the additional seats provides a logical and mathematically sound interpretation to the formulas in *Veterans* and *BANAT*.

The Commission on Elections allocated the party-list seats as follows:¹⁰

⁹ Ponencia, p. 1.

¹⁰ National Board of Canvassers Resolution No. 008-16, May 19, 2016 <http://www.comelec.gov.ph/?r=2016NLE/Resolutions/nboc_res00816> (visited January 13, 2017).

POLITICAL PARTY / COALITIONS/ SECTORAL ORGANIZATIONS	ACRONYM	GRAND TOTAL	PERCENTAGE (%) OF TOTAL VOTES GARNERED	GUA-RAN-TEED SEATS	ADDI-TIONAL SEATS	TOTAL SEATS
Ako Bicol Political Party	AKO BICOL	1,664,975	5.1423	1	2	3
Gabriela Women's Party	GABRIELA	1,367,795	4.2245	1	1	2
One Patriotic Coalition of Marginalized Nationals	1PACMAN	1,310,197	4.0466	1	1	2
Act Teachers Party-List	ACT TEACHERS	1,180,752	3.6468	1	1	2
Coalition of Associations of Senior Citizens in the Philippines	SENIOR CITIZENS	988,876	3.0542	1	1	2
Kabalikat ng Mamamayan	KABAYAN	840,393	2.5956	1	1	2
Agri-Agra na Reporma para sa Magsasaka ng Pilipinas Movement	AGRI	833,821	2.5753	1	1	2
Puwersa ng Bayaning Atleta	PBA	780,309	2.4100	1	1	2
Buhay Hayaan Yumabong	BUHAY	760,912	2.3501	1	1	2
Abono Party-List	ABONO	732,060	2.2610	1	1	2
Anak Mindanao Party-List	AMIN	706,689	2.1826	1	1	2
Cooperative Natcco Network Party	COOP-NATCCO	671,699	2.0746	1	1	2
Akbayan Citizens' Action Party	AKBAYAN	608,449	1.8792			1
Bayan Muna	BAYAN MUNA	606,566	1.8734			1

Agricultural Sector Alliance of the Philippines	AGAP	593,748	1.8338			1
An Waray	AN WARAY	590,895	1.8250			1
Citizens Battle Against Corruption	CIBAC	555,760	1.7165			1
Ang Asosasyon Sang Mangunguma Nga Bisaya Owa Mangunguma, Inc.	AAMBIS-OWA	495,483	1.5303			1
Advocacy for Social Empowerment and Nation Building through Easing Poverty, Inc.	KALINGA	494,725	1.5280			1
Advocacy for Teacher Empowerment through Action Cooperation and Harmony Towards Educational Reforms, Inc.	A TEACHER, INC.	475,488	1.4686			1
You Against Corruption and Poverty	YACAP	471,173	1.4552			1
Democratic Independent Workers Association, Inc.	DIWA	467,794	1.4448			1
Trade Union Congress Party	TUCP	467,275	1.4432			1
Abang Lingkod, Inc.	ABANG LINGKOD	466,701	1.4414			1
LPG Marketers Association, Inc.	LPGMA	466,103	1.4396			1
Alliance of Organizations, Networks and Associations of the Philippines, Inc.	ALONA	434,856	1.3431			1

Social Amelioration & Genuine Intervention on Poverty	1-SAGIP	397,064	1.2263			1
Butil Farmers Party	BUTIL	395,011	1.2200			1
Acts-Overseas Filipino Workers Coalition of Organizations	ACTS-OFW	374,601	1.1570			1
Anakpawis	ANAKPAWIS	367,376	1.1347			1
Ang Kabuhayan	ANG KABUHAYAN	348,533	1.0765			1
Angkla: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	337,245	1.0416			1
Ang Mata'y Alagaan	MATA	331,285	1.0232			1
1st Consumers Alliance for Rural Energy, Inc.	1-CARE	329,627	1.0181			1
Ang National Coalition of Indigenous Peoples Action Na! Inc.	ANAC-IP	318,257	0.9829			1
Arts Business and Science Professionals	ABS	301,457	0.9311			1
Kabataan Party-List	KABATAAN	300,420	0.9279			1
Bagong Henerasyon	BH (Bagong Henerasyon)	299,381	0.9246			1
Ating Agapay Sentrong Samahan ng mga Obrero, Inc.	AASENSO	294,281	0.9089			1
Serbisyo sa Bayan Party	SBP	280,465	0.8662			1

Magdalo Para sa Pilipino	MAGDALO	279,356	0.8628			1
Una ang Edukasyon	1-ANG EDUKASYON	278,393	0.8598			1
Manila Teachers' Savings and Loan Association, Inc.	MANILA TEACHERS	268,613	0.8296			1
Kusug Tausug	KUSUG TAUSUG	247,487	0.7644			1
Aangat Tayo		243,266	0.7513			1
Agbiag! Timpuyog Ilocano, Inc.	AGBIAG!	240,723	0.7435			1
TOTAL						59

Twelve (12) parties were able to garner two percent (2%) of the total votes cast, which entitled each to one (1) guaranteed seat. After subtracting the guaranteed seats, the second computation is done to compute for any additional seats these party-list groups may be entitled to. Applying the same formula to the rest of the party-list groups entitled to additional seats yields a different result:

POLITICAL PARTY/ COALITIONS/ SECTORAL ORGANIZATIONS	ACRONYM	GRAND TOTAL	PERCENTAGE (%) OF TOTAL VOTES GARNERED	ADDITIONAL SEATS WITH 59.5	ADDITIONAL SEATS WITH 59	ACTUAL ADDITIONAL SEAT
1. Ako Bicol Political Party	AKO BICOL	1,664,975	5.1423	2.442593	2.416881	2
2. Gabriela Women's Party	GABRIELA	1,367,795	4.2245	2.006638	1.985515	1
3. One Patriotic Coalition of Marginalized Nationals	1PACMAN	1,310,197	4.0466	1.922135	1.901902	1
4. Act Teachers Party-List	ACT TEACHERS	1,180,752	3.6468	1.73223	1.713996	1
5. Coalition of Associations of	SENIOR CITIZENS	988,876	3.0542	1.450745	1.435474	1

Senior Citizens in the Philippines						
6. Kabalikat ng Mamamayan	KABAYAN	840,393	2.5956	1.23291	1.219932	1
7. Agri-Agra na Reporma para sa Magsasaka ng Pilipinas Movement	AGRI	833,821	2.5753	1.223268	1.210391	1
8. Puwersa ng Bayaning Atleta	PBA	780,309	2.4100	1.14475	1.1327	1
9. Buhay Hayaan Yumabong	BUHAY	760,912	2.3501	1.116298	1.104547	1
10. Abono Party-List	ABONO	732,060	2.2610	1.073975	1.06267	1
11. Anak Mindanao Party-List	AMIN	706,689	2.1826	1.036735	1.025822	1
12. Cooperative Natcco Network Party	COOP-NATCCO	671,699	2.0746	0.985435	0.975062	1

As demonstrated, only Gabriela is significantly affected by a different multiplier. The rest of the party-list groups will not experience any change in their additional allocated seats.

However, computing the additional seats of all two-percenters would also yield a peculiar result. The 12th party-list group with a guaranteed seat is not actually entitled to an additional seat after the second round of computations. COOP-NATCCO garnered 671,699 votes, or 2.0746% of the votes. Using 59 to compute for additional seats would yield 0.975062 of a seat:

$$2.0746\% \times (59 - 12) = 0.975062$$

There is no 0.975062 of a legislative seat. Even if the multiplier 59.5 is used to compute for their additional seats, it would still yield to a fractional number less than 1:

$$2.0746\% \times (59.5 - 12) = 0.985435$$

The Commission on Elections, however, granted one (1) additional seat to COOP-NATCCO. If the same rule on fractional seats were applied, COOP-NATCCO would not have been entitled to an additional seat, regardless of whether its additional seats were computed on the basis of 59 legislative seats or 59.5 legislative seats.

Removing the incorrectly granted additional seat to COOP-NATCCO would have brought the total number of seats allocated for party-list groups to 58 or 19.5945%. This total, which is neither 59 nor 59.5, is not equivalent to the 20% allocation that party-list groups are entitled to. In any case, this Court would not have jurisdiction to remove the seat granted to COOP-NATCCO as the party-list group has already been proclaimed, taken oath, and assumed office.¹¹

Another solution would be to use precise mathematical formulas only until additional seats less the fractional amounts are apportioned. Whatever seats remain after the second computation would be distributed according to rank.

If we subtract the 12 guaranteed seats of the two-percenters and the 13 additional seats using the 47.5 multiplier, we are left with 33.5 seats. These 33.5 seats would be distributed according to rank. Thus, one seat would be given to the next in rank, COOP-NATCCO, in addition to its guaranteed seat. The rest of the 32.5 seats are distributed up to Aangat Tayo, the 46th in rank. Only 0.5 of a seat would remain after distribution. The 47th in rank, Agbiag!, would not have been guaranteed a seat.

Like COOP-NATCCO, this Court does not have the jurisdiction to remove Agbiag!'s seat. However, keeping their seats should not be at the expense of disenfranchising Gabriela's voters since entitlement to additional seats is based on the total amount of votes actually cast for the party-list group. In view of the unfortunate situation created by these mathematical inaccuracies, the party-list groups should have had 60 legislative seats for this election, instead of 59.

Although this Court in *BANAT* held that nothing in the Constitution or Republic Act No. 7941 mandates that the entire 20% allocation must be filled up,¹² removing fractional numbers before the computations have even been completed has the effect of preventing party-list groups from attaining the 20% allocation. This interpretation is inconsistent with the policy of the law "to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives"¹³ and "[enhance] their chances to

¹¹ See *Reyes v. Commission on Elections*, 712 Phil. 192 (2013) [Per J. Perez, En Banc].

¹² *BANAT v. Commission on Elections*, 604 Phil. 131, 170 (2009) [Per J. Carpio, En Banc].

¹³ Rep. Act No. 7941 (1995), sec. 1.



compete for and win seats in the legislature.”¹⁴ Granting Gabriela its additional allocated seat not only fulfills the constitutional allocation but also provides for greater representation and participation of marginalized and underrepresented groups.

I acknowledge Associate Justice Estela M. Perlas-Bernabe’s concern that using a fractional value in computing the additional seats may have the effect of giving more seats to higher ranked party-list groups. Republic Act No. 7941 equates greater representation and participation with the number of votes garnered, not the number of sectors or advocacies represented. Otherwise, the law would not have granted additional seats based on the proportionate number of votes cast. One (1) seat would have been given to each party-list group according to rank until the 20% allocation is exhausted. If the constitutional allocation is 59 seats, then 59 party-list groups—instead of just 47 party-list groups—would have representation in Congress.

Having more party-list groups in Congress does not always guarantee a wider representation of marginalized sectors. The present party-list system, with the interpretation suggested in this opinion, more accurately mirrors the representation devised by the electorate. It equates greater representation with the number of votes cast, which, in turn, translates to the electorate having the power to choose which sector or advocacy to support. Therefore, it counts every vote even if, in the formula, the vote will tentatively be a fraction in the computation. The more seats a party-list group acquires in an election, the greater its power to coalesce with other party-list groups. The larger the coalition, the greater the chances of passing legislation for a particular sector or advocacy. A party-list group can even gain enough electoral support to be able to advance into the mainstream and actually win seats in legislative districts. This results in a Congress that represents a wider range of ideologies to meet the needs of the electorate. That is what is meant by proportionate representation.

ACCORDINGLY, with these reservations, I vote to **DISMISS** the Petition for violation of the rule on forum shopping.


MARVIC M.V.F. LEONEN
Associate Justice

¹⁴ Rep. Act No. 7941 (1995), sec. 1.

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