Republic of the Philippines
Supreme Court
Manila

EN BANC

ANGKLA: ANG PARTIDO NG MGA PILIPINONG MARINO, INC. (ANGKLA), and SERBISYO SA BAYAN PARTY (SBP),
Petitioners,

- versus -

COMMISSION ON ELECTIONS (sitting as the National Board of Canvassers), CHAIRMAN SHERIFF M. ABAS, COMMISSIONER AL A. PARREÑO. COMMISSIONER LUIE TITO F. GUIA, COMMISSIONER MA. ROWENA AMELIA V. GUANZON, COMMISSIONER SOCCORRO B. INTING, COMMISSIONER MARLON S. CASQUEJO, AND COMMISSIONER ANTONIO T. KHO, JR.,
Respondents.

AKSYON MAGSASAKA – TINIG PARTIDO NG MASA (AKMA-PTM),
Petitioner-in-Intervention.

x----------x

G.R. No. 246816

Present:

PERALTA, *Chief Justice,*
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J.C., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN,
BALTAZAR-PADILLA,* *JJ.*

Promulgated:

September 15, 2020

* On leave.

DECISION

LAZARO-JAVIER, *J.*:

THE CASES

These twin Petitions a) for *Certiorari* and Prohibition, and b) in-Intervention assail the constitutionality of Section 11(b), Republic Act No. (RA) 7941[1] insofar as it provides that those garnering more than two percent (2%) of the votes cast for the party list system shall be entitled to additional seats **in proportion to their *total* number of votes**, *thus*:

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

Under the provision, party-lists garnering at least 2% of the votes cast for the party-list system (two-percenters) are guaranteed one seat each in the House of Representatives. Meanwhile, the challenged proviso allocates additional congressional seats to party-lists "in proportion to their total number of votes."

Petitioners ANGKLA: Ang Partido Ng Mga Pilipinong Marino, Inc., (ANGKLA) and Serbisyo sa Bayan Party (SBP) and Petitioner-in-Intervention Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTN) essentially assert that the allocation of additional seats in proportion to a party-list's "total number of votes" results in the double-counting of votes in favor of the two-percenters. For the same votes which guarantee the two-percenters a seat in the first round of seat allocation are again considered in the second round. The proviso purportedly violates the equal protection clause, hence, is unconstitutional.[2]

The aforenamed petitioners, therefore, pray that respondent Commission on Elections (COMELEC) be enjoined from double-counting the votes in favor of the two-percenters. Instead, the 2% votes counted in the first

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[1] AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR.

[2] *Rollo*, pp. 12-13.

round should first be excluded before proceeding to the second round of seat allocation. Their proposed framework is, as follows:

1. The parties, organizations, and coalitions taking part in the party-list elections shall be ranked from the highest to the lowest based on the total number of votes they each garnered in the party-list elections.

2. Each of the parties, organizations, and coalitions taking part in the party-list elections receiving at least two percent (2%) of the total votes cast under the party-list elections shall be entitled to one guaranteed seat each.

3. Votes amounting to two percent (2%) of the total votes cast for the party-list elections obtained by each of the participating parties, organizations, and coalitions should then be deducted from the total votes of each of these party-list groups that have been entitled to and given guaranteed seats.

4. The parties, organizations, and coalitions shall thereafter be re-ranked from highest to lowest based on the recomputed number of votes, that is, after deducting the two percent (2%) stated in paragraph 3.

5. The remaining party-list seats (or the "additional seats") shall then be distributed in proportion to the recomputed number of votes in paragraph 3 until all the additional seats are allocated.

6. Each party, organization, or coalition shall be entitled to not more than three (3) seats.[3]

This position is allegedly consistent with the Court's Resolution in ***Barangay Association For National Advancement And Transparency (BANAT) v. COMELEC*** *(BANAT)*[4] dated July 8, 2009:

> x x x CIBAC's 2.81% (**from the percentage of 4.81% less the 2% for its guaranteed seat**) has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03 x x x (Emphasis added)

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[3] *Id.* at 23-24.

[4] 609 Phil. 751, 767-768 (2009).

On May 22, 2019, the National Board of Canvassers (NBOC) promulgated NBOC Resolution No. 004-19[5] declaring the winning party-list groups in the May 13, 2019 elections. Based on the National Canvass Report No. 8[6] and adhering to the Court's pronouncement in *BANAT,* respondent COMELEC distributed sixty-one (61) congressional seats among the following parties, organizations, and coalitions taking part in the May 13, 2019 party-list election, *viz.*:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES	SEATS
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	ACT CIS	2,651,987	9.51	3
2	BAYAN MUNA	BAYAN MUNA	1,117,403	4.01	3
3	AKO BICOL POLITICAL PARTY	AKO BICOL	1,049,040	3.76	2
4	CITIZENS BATTLE AGAINST CORRUPTION	CBAC	929,718	3.33	2
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	ANG PROBINSIYANO	770,344	2.76	2
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	1 PACMAN	713,969	2.56	2
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44	2
8	PROBINSYANO AKO	PROBINSYANO AKO	630, 435	2.26	2
9	COALITION OF ASSOCIATION OF SENIOR CITIZENS IN THE PHILIPPINES, INC.	SENIOR CITIZENS	516, 927	1.85	1
10	MAGKAKASAMA SA SAKAHAN, KAUNLARAN	MAGSASAKA	496,337	1.78	1
11	ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES	APEC	480, 874	1.72	1
12	GABRIELA WOMEN'S PARTY	GABRIELA	449,440	1.61	1
13	AN WARAY	AN WARAY	442,090	1.59	1
14	COOPERATIVE NATCCO NETWORK	COOP-NATTCO	417,285	1.50	1
15	ACT TEACHERS	ACT TEACHERS	395,327	1.42	1
16	PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC.	PHILRECA	394,966	1.42	1
17	AKO BISAYA, INC.	AKO BISAYA	394,304	1.41	1
18	TINGOG SINIRANGAN	TINGOG SINIRANGAN	391,211	1.40	1
19	ABONO	ABONO	378,204	1.36	1
20	BUHAY HAYAAN YUMABONG	BUHAY	361,493	1.30	1
21	DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH	DUTERTE YOUTH	354,629	1.27	1

[5] *Rollo*, p. 143.
[6] *Id.* at 148.

22	KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING	KALINGA	339,655	1.22	1
23	PWERSA NG BAYANING ATLETA	PBA	326,258	1.17	1
24	ALLIANCE OF ORGANIZATIONS, NETWORKS, AND ASSOCIATIONS OF THE PHIIPPINES	ALONA	320,000	1.15	1
25	RURAL ELECTRIC CONSUMERS AND BENEFICIARIES OF DEVELOPMENT AND ADVANCEMENT, INC.	RECOBODA	318,511	1.14	1
26	BAGONG HENERASYON	BH (BAGONG HENERASYON)	288,752	1.04	1
27	BAHAY PARA SA PAMILYANG PILIPINO, INC.	BAHAY	281,793	1.01	1
28	CONSTRUCTION WORKERS SOLIDARITY	CWS	277,890	1.00	1
29	ABANG LINGKOD, INC.	ABANG LINGKOD	275,199	0.99	1
30	ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION COOPERATION HARMONY TOWARDS EDUCATIONAL REFORM	A TEACHER	274,460	0.98	1
31	BARANGAY HEALTH WELLNESS	BHW	269,518	0.97	1
32	SOCIAL AMELIORATION AND GENUINE INTERVENTION ON POVERTY	SAGIP	257,313	0.92	1
33	TRADE UNION CONGRESS PARTY	TUCP	256,059	0.92	1
34	MAGDALO PARA SA PILIPINO	MAGDALO	253,536	0.91	1
35	GALING SA PUSO PARTY	GP	249,484	0.89	1
36	MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION, INC.	MANILA TEACHERS'	249,416	0.89	1
37	REBOLUSYONARONG ALYANSA MAKABANSA	RAM	238,150	0.85	1
38	ALAGAAN NATIN ATING KALUSUGAN	ANAKALUSUGAN	237,629	0.85	1
39	AKO PADAYON PILIPINO	AKO PADAYON	235,112	0.84	1
40	ANG ASOSASYON SANG MANGUNGUMA NGA BISAYA0OWA MANGUNGUMA, INC.	AAMBIS-OWA	234,552	0.84	1
41	KUSUG TAUSUG	KUSUG TAUSUG	228,224	0.82	1
42	DUMPER PHILIPPINES TAXI DRIVERS ASSOCIATION, INC.	DUMPER PTDA	223,199	0.80	1
43	TALINO AT GALING PILIPINO	TGP	217,525	0.78	1
44	PUBLIC SAFETY ALLIANCE FOR TRANSFORMATION AND RULE OF LAW	PATROL	216,653	0.78	1
45	ANAK MINDANAO	AMIN	212,323	0.76	1

46	AGRICULTURAL SECTOR ALLIANCE OF THE PHILIPPINES	AGAP	208,752	0.75	1
47	LPG MARKETERS ASSOCIATION, INC.	LPGMA	208,219	0.75	1
48	OFW FAMILY CLUB, INC.	OFW FAMILY	200,881	0.72	1
49	KABALIKAT NG MAMAMAYAN	KABAYAN	198,571	0.71	1
50	DEMOCRATIC INDEPENDENT WORKERS ASSOCIATION	DIWA	196,385	0.70	1
51	KABATAAN PARTY LIST	KABATAAN	195,837	0.70	1

Additionally, the National Canvass Report No. 8 revealed that the four (4) parties, organizations, and coalitions taking part in the May 13, 2019 party-list election with the next highest votes were:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES
52	AKSYON MAGSASAKA – PARTIDO TINIG NG MASA	AKMA-PTM	191,804	0.69
53	SERBISYO SA BAYAN PARTY	SBP	180,535	0.65
54	ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC,	ANGKLA	179,909	0.65
55	AKBAYAN CITIZENS ACTION PARTY	AKBAYAN	173,356	0.62

In view of this development, the aforenamed petitioners amended their petition to additionally seek the annulment of NBOC Resolution No. 004-19 on ground that it supposedly violated the Court's Resolution dated July 8, 2009 in *BANAT*. They also pray that the COMELEC be directed to proclaim that they are entitled to at least a seat each in the May 13, 2019 party-list election. This claim is based on their proposed framework for seat distribution, whereby AKMA-PTM, SBP, ANGKLA and AKBAYAN would allegedly be entitled to one (1) seat each to be taken from, or at the expense of, the seats allocated to BAYAN MUNA, 1PACMAN, MARINO, and PROBINSYANO AKO.[7]

On June 13, 2019, AKMA-PTM filed the petition-in-intervention[8] echoing the arguments raised in the main petition pertaining to the alleged unconstitutionality of the double-counting of votes. It points out that the total votes cast under the party-list system during the May 13, 2019 elections numbered 27,884,790. Thus, a party, organization or coalition taking part in the party-list election must have obtained 2% thereof, or at least 557,695.80 votes, to secure a guaranteed seat. It argues that each time a party, organization, or coalition taking part in the party-list election earns a

[7] *Id.* at 133.
[8] *Id.* at 159.

guaranteed seat, 557,695.80 of its votes should then be deducted from the total number of votes obtained by that party-list, thus:[9]

Party-List	VOTES GARNERED	% OF TOTAL VOTES	Guaranteed Seat	Remaining Votes
1 PACMAN	713,969	2.56	1	156,273.20
MARINO	681,448	2.44	1	123,752.20
PROBINSYANO AKO	630,435	2.26	1	72,739.20

Since the remaining votes of 1PACMAN, MARINO and PROBINSYANO AKO, on the one hand, are fewer than those garnered by petitioners AKMA-PTM (191,804), SBP (180,535) and ANGKLA (179,909), on the other, the latter should be prioritized in the second round of seat distribution. Accordingly, 1PACMAN, MARINO and PROBINSYANO AKO should not have been allocated a second seat on top of the first guaranteed; their supposed second seats should have been awarded to petitioners. Applying the same formula, the third seat allocated to BAYAN MUNA must also be forfeited, allowing AKBAYAN representation in the House of Representatives.

The Office of the Solicitor General (OSG), through Solicitor General Jose C. Calida, Assistant Solicitor General Thomas M. Laragan and State Solicitor Isar O. Pepito, defends the position of public respondent COMELEC. It ripostes, in the main:

First. There is no double-counting of votes since the system of counting pertains to two (2) different rounds and for two (2) different purposes: the first round is for purposes of applying the 2% threshold and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the second round is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected *via* a party-list system.[10]

Second. The challenged provision does not violate the equal protection clause. The two-percenters have a clearer mandate of the people than the non-two-percenters. This substantial distinction between the two (2) justifies the grant of additional rights and benefits to the former over the latter.[11]

Third. Petitioners mislead the Court in claiming that its Resolution in *BANAT* dated July 8, 2009 supports their proposed framework, when the latter's proposal in fact is contrary thereto.[12]

Finally. RA 7941 does not defeat the rationale behind the party-list system. It is erroneous for petitioners to hint that the system is reserved for

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[9] *Id.* at 163.
[10] *Id.* at 188.
[11] *Id.* at 192.
[12] *Id.* at 198.

the marginalized and underrepresented. On the contrary, skewed in favor of minimally-representative and unpopular party, organization or coalition taking part in the party-list election, petitioners' proposed formula is repugnant to the aim of the party-list system to ensure the broadest representation possible.[13]

Issue

Is Section 11(b), RA 7941 allocating additional seats to party-lists in proportion to their ***total*** number of votes unconstitutional?

Ruling

The petitions are devoid of merit.

Petitioners fail to meet the third requisite for judicial review

The power of judicial review is conferred on the judicial branch of government under Section 1, Article VIII of the *Constitution*.[14] It sets to correct and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch of Government[15] and may therefore be invoked to nullify actions of the legislative branch which have allegedly infringed the *Constitution*.[16]

Although directly conferred by the *Constitution*, the power of judicial review is not without limitations. It requires compliance with the following requisites: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have legal standing to challenge; he or she or it must have a personal and substantial interest in the case such that he or she or it has sustained, or will sustain, direct injury as a result of the assailed measure's enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[17]

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[13] *Id.* at 199-202.

[14] SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

[15] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1087 (2017).

[16] *Tañada v. Angara*, 338 Phil. 546 (1997).

[17] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 892 (2003).

There is no dispute that the first and the second requisites are present in this case:

First. An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.[18] A question is ripe for adjudication when there is an actual act that had been performed or accomplished that directly and adversely affected the party challenging the act.[19]

Here, the COMELEC already applied the assailed Section 11(b), RA 7941 when it promulgated Resolution No. 004-19, proclaimed the winning party-list parties, organizations, or coalitions in the May 13, 2019 party-list election and allocated to each of them seats in the House of Representatives.

Second. *Locus standi* or legal standing is the personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[20] Petitioners assert that the nullification of the contested proviso would entitle them to one (1) seat each in Congress under the party-list system.

But the third requisite - - the question of constitutionality must be raised at the earliest possible opportunity - - is absent here.

RA 7941 was enacted in 1995. In 2009, the Court settled the interpretation of Section 11(b) in *BANAT*. The Court takes judicial notice of the fact that, thereafter, petitioner ANGKLA was proclaimed as a winning party-list organization in the 2013 and 2016 party-list elections. On the other hand, SBP garnered enough votes to secure a congressional seat in 2016.

Petitioners ANGKLA and SBP had therefore benefited from the *BANAT* doctrine in the previous elections. In fact, SBP itself, being among the winning party-list groups in the 2016 elections impleaded as respondent in ***An Waray v. COMELEC***,[21] even defended the application of the *BANAT* formula, *viz.*:

> ***There was no grave abuse of discretion***
>
> 13. It is indisputable that the COMELEC was merely performing its duties when it adhered to the formula set forth by the Honorable Court. It is fundamental that judicial decisions applying or interpreting the law become

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[18] *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, citing *Republic Telecommunications Holding, Inc. v. Santiago*, 556 Phil. 83, 91-92 (2007).

[19] *Imbong*, citing *The Province Of North Cotabato v. The Government of the Republic of the Philippines*, 589 Phil. 387, 481 (2008).

[20] *Francisco*, supra note 17, citing *IBP v. Zamora*, 392 Phil. 618, 632 (2000); *Joya v. PCGG*, 296-A Phil. 595, 603 (1993); *House International Building Tenants Association, Inc. v. Intermediate Appellate Court*, 235 Phil. 703 (1987).

[21] Entitled "*An Waray, Agricultural Sector Alliance of the Philippines (ACAP), and Citizen's Battle Against Corruption (CIBAC) v. COMELEC, Ating Agapay Sentrong Samahan ng mga Obrero, Inc. (AASENSO), Serbisyo sa Bayan Party (SBP), et al.*", G.R. No. 224846, February 4, 2020.

part of the legal system of the Philippines. It becomes law of the land. The COMELEC was therefore not only right, it was duty bound to implement the formula from the *Banat Decision.*

14. Contrary to the assertions of the Petitioners, the COMELEC would have instead committed grave abuse of discretion *if it had* implemented the formula which the Petitioners advanced, for to do so would be in direct contravention of the edict of this Honorable Court, as set forth in the *Banat Decision.* x x x

x x x x

15. xxx It bears emphasis that the Petitioners have not claimed, for indeed they cannot, that the COMELEC failed to properly apply the formula set forth in the *Banat Decision.* They only claim that their formula is better. As has been shown, this is not the case. The Petitioners' formula, far from being better, is susceptible to violations of the law.

x x x x

20. The claim of proportionality, upon which the Petitioners premise their claim of grave abuse, and to which the Petitioners so furiously cling, has already been addressed and laid to rest in the *Banat Resolution*. x x x

21. As has been stated by the Honorable Court, there is no Constitutional requirement for *absolute* proportional representation in the allocation of party-lists seats. The term "proportional", by its very nature, means that it is relative. It cannot be successfully argued that the current formula for allocating party-list seats is not proportional.

22. What the Petitioners seek, or at least what they are impliedly seeking, is *absolute* proportionality. Such absolute proportionality is neither mandated by the Constitution nor the law. Much less can it be effected through a flawed formula such as that proposed by the Petitioners.[22] (emphases added)

As for AKMA-PTM, way back in 2013, it initiated the petition in G.R. No. 207134 entitled ***AKMA-PTM v. COMELEC***.[23] Far from questioning the constitutionality of the proviso in Section 11(b) of RA 7941 therein, AKMA-PTM even vigorously asserted, nay, invoked the application of this law in its favor as among those who purportedly won a party-list congressional seat during the 2013 National and Local Elections. It also invoked the application of *BANAT* for this same purpose.

Indeed, for ANGKLA, SBP, and AKMA-PTM now to question the constitutionality of the assailed proviso in Section 11(b) of RA 7941 not only came too late in the day, but also reeks of inconsistent positions and double standard which negate the presence of the third requisite of judicial review.

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[22] *Id., Rollo,* pp. 318-321

[23] *Aksyon Magsasaka-Partido Tinig Ng Masa (AKMA-PTM) v. Commission on Elections,* G.R. No. 207134, June 16, 2015.

Justice Mario Victor "Marvic" F. Leonen shared his enlightening thoughts during the deliberation, *viz.*:

> It does not help petitioner's position xxx that petitioners asserted an alternative method of allocating party-list seats only in the wake of their defeat in the 2019 elections, and that they never objected to the method currently in place when they benefitted from and, on the basis of it, proclaimed winners in previous elections. An electoral system is meant to be an objective and dispassionate means for determining winners in an election. For it to be upheld at one instance and assailed at another based on how one fares is to undermine an electoral system's requisite neutrality and to subvert meaningful democratic representation.

Philippine jurisprudence has traditionally applied the "earliest opportunity" element of judicial review ***vertically,*** *i.e.,* the constitutional argument must have been raised very early in any of the pleadings or processes prior in time in the same case. But this does not preclude the Court from adopting the ***horizontal*** test of "earliest opportunity" observed in the United States,[24] *i.e.,* constitutional questions must be preserved by raising them at the earliest opportunity **after the grounds for objection become apparent**. Otherwise stated, the threshold is not only whether the earliest opportunity was in the pleadings and processes prior in time in the same case, but also whether the grounds for the constitutional objection was already apparent when a prior case relating to the same issue and involving the same petitioner was being heard.

In ***Schneider v. Jergens***,[25] petitioner was faulted for not raising the constitutional argument at the earliest opportunity in the prior petition for certiorari as he raised it only in the later petition for federal habeas corpus. *Schneider* identified the earliest opportunity as the earlier petition for certiorari though it was not a continuation of the later petition for federal habeas corpus, or in other words, though the prior petition was not a vertical opportunity wherein to raise the constitutional argument, but a horizontal case being a mere related case.

There is really no reason to distinguish between the vertical and the horizontal as to when the earliest opportunity to raise the constitutional argument should be made. The threshold is not whether the earliest opportunity was in the pleadings and processes prior in time in the same case, but whether the grounds for the constitutional objection was already apparent when the prior case was being heard, regardless of the vertical or horizontal nature of the case in which it could have been raised.

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[24] In *Schneider v. Jergens*, 268 F. Supp. 2d 1075 (2003).
[25] *Id.*

Failure to pass the horizontal test of "earliest opportunity" certainly calls for the application of estoppel. In ***Philippine Bank of Communications v. Court of Appeals,***[26] the Court enunciated:

> At the very least, private respondent is **now estopped from claiming** that property in question belongs to the conjugal partnership. She **cannot now take an inconsistent stance after an adverse decision** in G.R. No. 92067. In *Santiago Syjuco, Inc. v. Castro*, we had the occasion to reiterate that:
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> > The principles of equitable estoppel, sometimes called **estoppel *in pais***, are made part of our law by Art. 1432 of the Civil Code. Coming under this class is **estoppel by silence**, which obtains here and as to which it has been held that:
> >
> > > . . . an estoppel may arise from silence as well as from words. **"Estoppel by silence" arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice.** Silence may support an estoppel whether the failure to speak is intentional or negligent.
> > >
> > > **Inaction or silence may under some circumstances amount to a misrepresentation and concealment of facts, so as to raise an equitable estoppel.** When the silence is of such a character and under such circumstances that **it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel.** This doctrine rests on the principle that **if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent.** He who remains silent when he ought to speak cannot be heard to speak when he should be silent. *(emphasis added)*

But this is not all. The well-known principle of equity that "he who comes to court must come with clean hands" further bars petitioners from being granted the remedy applied for. As elucidated in ***North Negros Sugar Co. v. Hidalgo***:[27]

> xxx [T]he general principle that he who comes into equity must come with clean hands applies only to plaintiff's conduct relation to the very matter in litigation. The want of equity that will bar a right to equitable relief for coming into court with unclean hands must be so directly connected with the matter in litigation that it has affected the equitable relations of the parties arising out of the transaction in question.

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[26] 344 Phil. 90, 99 (1997).
[27] 63 Phil. 665, 681-682 (1936).

Another. The judicial process is sacred and is meant to protect only those who are innocent. It would certainly leave an indelible mark in the conscience to allow a party to challenge a doctrine after it has ceased to be beneficial to it. For emphasis, petitioners stayed silent when *BANAT* was beneficial to them. They concealed in *An Waray* and *AKMA-PTM* the fact that the votes of the two-percenters, borrowing their words now, are being "double-counted." They led every two-percenter to expect or believe that they would continue to abide by the *BANAT* rule. This is the reasonable inference that every reasonable two-percenter would hold.

Petitioners knew and still know how they had ended up to obtain party-list seats – through the *BANAT* formula. They knew and still know the *BANAT* rule, by heart. They knew and still know what this rule entails. Petitioners consist of knowledgeable individuals, not ones who accidentally or luckily became legislators, but ones who through tactics and strategies became party-list representatives in Congress.

In any event, had petitioners believed in good faith that the *BANAT* formula was and still is inapplicable and invalid, they should have early on refused their seats as a result of this formula and contested its constitutionality, if only to show that this issue is essential to a resolution of their claims.

To repeat, the Court may deny redress despite the litigant establishing a clear right and availing of the proper remedy if it appears that said litigant acted unfairly or recklessly in respect to the matter in which redress is sought, or where the litigant has encouraged, invited, or contributed to the injury sustained.[28]

But given the **transcendental importance** of the issues raised in this case, the discussion on **the third requisite** cannot end here. As we have held in ***Padilla v. Congress***,[29] "it is an accepted doctrine that the Court may brush aside procedural technicalities and, nonetheless, exercise its power of judicial review in cases of transcendental importance."

The constitutional challenge lodged here has the potential to alter the political landscape in the country and may steer State policy towards attaining the broadest possible party-list representation in the House of Representatives.

Quite anti-climactically, as regards the **fourth requisite** of judicial review, the Court finds that the question of constitutionality is the very ***lis mota*** here. ***Lis mota*** is a Latin term meaning the cause or motivation of a legal action or lawsuit. The literal translation is "litigation moved."[30] Under the rubric of ***lis mota***, in the context of judicial review, the Court will not pass

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[28] *Id.*

[29] 814 Phil. 344, 377 (2017).

[30] https://definitions.uslegal.com/l/lis-mota/#:~:text=Lis%20mota%20is%20a%20Latin,translation%20is%20%22litigation%20moved%22. Last accessed July 25, 2020, 11:25AM.

upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.[31]

Here, the threshold issue raised by petitioners and met head-on by respondents is the constitutionality of Section 11(b) of RA 7941. It is indeed the very *lis mota* of the case. Resolving the issue of constitutionality is the only way the case can be settled once and for all. Otherwise, every election will become a Lazarus Pit where the perennial question on the allocation of party-list seats gets resurrected without fail. In fact, every three (3) years in the past and every (3) years thereafter, the Court had been and will be confronted with the all too familiar question on the applicability or inapplicability of *BANAT vis-à-vis* Section 11(b) of RA 7941.

The present case illustrates much more than a power struggle between would-be members of the House of Representatives. Thus, the Court may properly exercise jurisdiction over the same pursuant to Sections 4(2) and 5 of Article VIII of the *Constitution*, to the exclusion of the COMELEC and the House of Representatives Electoral Tribunal (HRET).

It bears emphasis that the jurisdiction of the HRET is limited under Section 17, Article VI of the *Constitution*, *viz.*:

> Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal, which shall be the sole judge of **all contests relating to the election, returns, and qualifications of their respective Members**. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman. (emphasis added)

Meanwhile, the powers and functions of the COMELEC are circumscribed under Section 2, Article IX-C of the *Constitution*, thus:

> **Sec. 2.** The Commission on Elections shall exercise the following powers and functions:
>
> x x x x
>
> 2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general

[31] *Garcia v. Executive Secretary*, 602 Phil. 64, 82 (2009).

> jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.
>
> 3. Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.
>
> x x x x

Verily, neither the HRET nor the COMELEC has jurisdiction over the present petition which directly assails the constitutionality of the proviso in Section 11(b), RA 7941, albeit the results may affect the current roster of Members in the House of Representatives. Petitioners, therefore, were correct in seeking redress before this Court.

The *Constitution* gives Congress the discretion to formulate the manner of allocating congressional seats to qualified parties, groups, and coalitions.

The *Constitution* mandates that the party-list system shall compose twenty percent (20%) of the total membership in the House of Representatives.[32] But the matter on how party-lists could qualify for a seat is left to the wisdom of the legislature.[33] Section 5(1), Article VI of the *Constitution* ordains:

> 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. (emphasis and underscoring added)
>
> x x x x x x x x x

Pursuant to this constitutional directive, Congress enacted RA 7941 setting forth the parameters for electing party-lists and the manner of allocating seats to them:

> **Section 11.** *Number of Party-List Representatives.* x x x
>
> x x x x

[32] Section 5(2), Article VI of the 1987 Constitution.
[33] *BANAT v. COMELEC,* 604 Phil. 131, 151 (2009).

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

Alliance for Rural and Agrarian Reconstruction v. Commission on Elections[34] outlines the Court's series of rulings interpreting this provision, thus:

In *Veterans Federation Party v. Commission on Elections*, we reversed the Commission on Elections' ruling that the respondent parties, coalitions, and organizations were each entitled to a party-list seat despite their failure to reach the 2% threshold in the 1998 party-list election. Veterans also stated that the 20% requirement in the Constitution is merely a ceiling.

Veterans laid down the "four inviolable parameters" in determining the winners in a Philippine-style party-list election based on a reading of the Constitution and Republic Act No. 7941:

First, the twenty percent allocation — the combined number of all party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list.

Second, the two percent threshold — only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives.

Third, the three-seat limit — each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.

Fourth, proportional representation — the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes."

In Partido ng Manggagawa (PM) and Butil Farmers Party (Butil) v. COMELEC, the petitioning party-list groups sought the immediate proclamation by the Commission on Elections of their respective second nominee, claiming that they were entitled to one (1) additional seat each in the House of Representatives. We held that the correct formula to be used is the one used in Veterans and reiterated it in Ang Bagong Bayani — OFW Labor Party v. COMELEC. This Court in CIBAC v. COMELEC differentiates the formula used in Ang Bagong Bayani but upholds the validity of the Veterans formula.

In *BANAT v. COMELEC*, we **declared the 2% threshold *in relation to the distribution of the additional seats as void.*** We said in that case that:

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[34] 723 Phil. 160, 187-193 (2013).

> . . . The two percent threshold presents an unwarranted obstacle to the full implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of "the broadest possible representation of party, sectoral or group interests in the House of Representatives." (Republic Act No. 7941, Section 2)
>
> x x x x x x x x x
>
> . . . There are **two steps in the second round of seat allocation. First**, the **percentage is multiplied by the remaining available seats**, 38, which is the difference between the 55 maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. The **whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second**, we **assign one party-list seat to each of the parties next in rank until all available seats are completely distributed**. We distributed all of the remaining 38 seats in the second round of seat allocation. **Finally**, we **apply the three-seat cap** to determine the number of seats each qualified party-list candidate is entitled.

The most recent *Atong Paglaum v. COMELEC* does not in any way modify the formula set in Veterans. It only corrects the definition of valid party-list groups. We affirmed that party-list groups may be national, regional, and sectoral parties or organizations. We abandoned the requirement introduced in Ang Bagong Bayani that all party-list groups should prove that they represent a "marginalized" or "under-represented" sector.

Proportional representation is provided in Section 2 of Republic Act No. 7941. **BANAT** overturned Veterans' interpretation of the phrase in proportion to their total number of votes. We **clarified** that the **interpretation** that *only those that obtained at least 2% of the votes may get additional seats* **will not result in proportional representation** *because* it will make it *impossible for the party-list seats to be filled completely*. As demonstrated in **BANAT**, the **20% share may never be filled if the 2% threshold is maintained**.

The **divisor**, thus, **helps to determine the correct percentage of representation of party-list groups** as intended by the law. This is **part of the index of proportionality of the representation of a party-list to the House of Representatives**. It **measures the relation between the share of the total seats and the share of the total votes of the party-list**. In Veterans, **where the 20% requirement in the Constitution was treated only as a ceiling, the mandate for proportional representation was not achieved**, and thus, was held void by this Court.

x x x x

We qualify that the divisor to be used in interpreting the formula used in BANAT is the total votes cast for the party-list system. This should not include the invalid votes. However, so as not to disenfranchise a substantial portion of the electorate, total votes cast for the party-list system

> should mean all the votes validly cast for all the candidates listed in the ballot. The voter relies on the ballot when making his or her choices.
>
> To the voter, the listing of candidates in the official ballot represents the extent of his or her choices for an electoral exercise. He or she is entitled to the expectation that these names have properly been vetted by the Commission on Elections. Therefore, he or she is also by right entitled to the expectation that his or her choice based on the listed names in the ballot will be counted. (citations omitted, emphasis added)

The Court was not just changing formulas simply to accommodate the political aspirations of some party-list candidates. Its decisions were based on the original intent as well as the textual and contextual dynamics of RA 7941 *vis-à-vis* Section 5 (2) of Article VI of the Constitution. As ***finally settled*** in the landmark case of *BANAT,* Section 11(b) of RA 7941 is to be applied, thus:[35]

Round 1:

a. The participating parties, organizations or coalitions shall be ranked from highest to lowest based on the number of votes they each garnered in the party-list election.
b. Each of those receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to and guaranteed one seat each.

Rationale: The statute references a two-percent (2%) threshold. The one-seat guarantee based on this arithmetical computation gives substance to this threshold.

Round 2, Part 1:

a. The percentage of votes garnered by each of the parties, organizations and coalitions is multiplied by the remaining available seats after Round 1. All party-list participants shall participate in this round *regardless of the percentage of votes they garnered.*[36]
b. The party-list participants shall be entitled to additional seats based on the product arrived at in (a). The whole integer of the product corresponds to a party's share in the remaining available seats. Fractional seats shall not be awarded.
   Rationale: This formula gives flesh to the proportionality rule in relation to the total number of votes obtained by each of the participating party, organization, or coalition.
c. A Party-list shall be awarded no more than two (2) additional seats.
   Rationale: The three-seat cap in the statute is to be observed.

Round 2, Part 2:

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[35] Supra note 4.
[36] *Id.*

a. The party-list party, organization or coalition next in rank shall be allocated one additional seat each until all available seats are completely distributed.
Rationale: This algorithm endeavors to complete the 20% composition for party-list representation in the House of Representatives.

During the deliberation, Senior Associate Justice Estela M. Perlas-Bernabe keenly noted that the *BANAT* formula mirrors the textual progression of Section 11(b) of RA 7941, as worded, thus:

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

The first round of seat allocation is based on the first sentence of Section 11(b) while the second round is based on the first proviso. To prescribe a method of seat allocation contrary to the unequivocal language of RA 7941 would be nothing short of judicial legislation, if not usurpation of legislative powers, as it would allow us to substitute the wisdom of Congress with ours.

The advantage given to the two-percenters does not violate the equal protection clause.

Petitioners do not challenge the first round of seat allocation. They maintain, however, that the second round of seat allocation results in the double-counting of votes. According to them, each vote after the 2% threshold (to which has been allotted a guaranteed one seat) should already carry equal weight. They assert violation of the "one person, one vote" principle as well as the equal protection clause.

Petitioners are mistaken in claiming that the retention of the 2% votes in the second round of seat allocation is unconstitutional. **All votes, whether cast in favor of two-percenters and non-two-percenters, are counted once.** The perceived "double-counting of votes" does not offend the equal protection clause - ***it is an advantage given to two-percenters based on substantial distinction that the rule of law has long acknowledged and confirmed.***

a. One person, one vote

Petitioners' claim, which Justices Alexander G. Gesmundo and Rodil V. Zalameda echo, is hinged on the principle of "one person, one vote". Justice Gesmundo even cites the discussion of retired Senior Associate Justice Antonio T. Carpio of this principle in his dissenting opinion in ***Aquino III v. COMELEC***,[37] thus:

> Evidently, the idea of the people, as individuals, electing their representatives under the principle of "one person, one vote," is the cardinal feature of any polity, like ours, claiming to be a "democratic and republican State." A democracy in its pure state is one where the majority of the people, under the principle of "one person, one vote," directly run the government. A republic is one which has no monarch, royalty or nobility, ruled by a representative government elected by the majority of the people under the principle of "one person, one vote," where all citizens are equally subject to the laws. A republic is also known as a representative democracy. The democratic and republican ideals are intertwined, and converge on the common principle of *equality* — equality in voting power, and equality under the law.
>
> The constitutional standard of proportional representation is rooted in equality in voting power — that each vote is worth the same as any other vote, not more or less. Regardless of race, ethnicity, religion, sex, occupation, poverty, wealth or literacy, *voters have an equal vote*. Translated in terms of legislative redistricting, this means equal representation for equal numbers of people or equal voting weight per legislative district. In constitutional parlance, this means representation for every legislative district "in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" or proportional representation. Thus, the principle of "one person, one vote" or equality in voting power is inherent in proportional representation.

Notably though, Justice Carpio was the *ponente* in *BANAT*. Surely, Justice Carpio would not have crafted the *BANAT* formula in 2009 only to deem it a violation of the principle of "one person, one vote" a year later in *Aquino*. At any rate, there appears to be no inconsistency between Justice Carpio's *BANAT* Formula, on the one hand, and his edict in *Aquino*, on the other.

Indeed, all voters are entitled to one vote. This truism is and remains inviolable. Senior Associate Justice Perlas-Bernabe opined that this great equalizer "is a knock against elitism and advances the egalitarian concept that all persons are equal before the eyes of the law." Contrary to petitioners' claim, this principle is not diminished by the two (2) rounds of seat allocation under the *BANAT* formula.

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[37] 631 Phil. 595, 637-638 (2010).

Petitioners foist the idea that **only the votes of the two-percenters were counted and considered in the first round**. Justice Gesmundo seems to agree with them and states:

> As correctly pointed out by the petitioners, the 2% votes to justify the allocation of one guaranteed seat were considered and used during the allocation of the guaranteed seats. To consider them again, this time for purposes of allocating additional seats would give these voters more weight or more value than others in violation of the equal protection clause as it gives due preference to votes received by party-list organizations who got 2% of the vote from those who do not.

Nothing is farthest from the truth. **All votes were counted, considered and used during the first round of seat allocation, not just those of the two-percenters**. But in the end, the non-two-percenters simply did not meet the requisite voting threshold to be allocated a guaranteed seat.

As correctly argued by the OSG, the system of counting pertains to two (2) different rounds and for two (2) different purposes: the **first round** is for purposes of applying the **2% threshold** and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the **second round** is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected *via* a party-list system, thus, seats are computed **in proportion to a party-list's total number of votes.**

Such is the current state of the party-list system elections. Since the system does not have a defined constituency as in district representation, elections are won by hurdling thresholds, not by sheer plurality of votes. Congress deemed it wise to set two (2) thresholds for the two (2) rounds of seat allocation. Each party-list earns a seat each time they hurdle the threshold in each round. But to clarify, **each vote is counted only once** for both rounds.

In the first round, party-lists receiving at least 2% of the total votes cast for the party-list system are entitled to one seat. In determining whether a party-list has met the proportional threshold, its percentage number of votes is computed, as follows:

$$\frac{\text{Number of votes obtained by a Party-list}}{\textbf{Total number of votes cast under the party-list system}}$$

The **"total number of votes cast under the party-list system",** the very divisor of the formula, the very index of proportionality, requires that **all** votes cast under the party-list system be counted and considered in allocating seats in the first round, be it in favor of a two-percenter or a non-two-percenter. **This only goes to show that all votes were counted and considered in the first round**. Just because the non-two-percenters were not

allocated a guaranteed seat does not mean that their votes were accorded lesser weight, let alone, disregarded. It simply means that they did not reach the proportional threshold in the first round.

Take for example a senatorial race where only twelve (12) seats are vacant. When the 15th placer is not awarded a seat, this does not mean that the votes cast in his or her favor were not counted and his or her constituents, disenfranchised. This simply means that the candidate's total votes were not enough to warrant a seat in the Senate; the candidate simply lost.

Another. In a district election for a representative in the House, a mere plurality winner takes it all. No matter how many votes the first placer has over the second placer, whether just one vote or a million votes, the outcome is the same – the second placer's votes are not equal to the first placer's votes in the sense that the former and his or her votes do not get to be actually represented in the House, though theoretically the first placer represents all his or her constituency including those who did not vote for him or her. **Yet, there is no violation of the "one person, one vote" doctrine because the overall effect of the votes is that their representative (whether they voted for said candidate) gets to vote in the House and his or her vote has the same or equal weight as the vote of any other Representative.**

Just as how **all votes were considered in the first round** of seat allocation, **all votes would be considered in the first part of the second round** of seat allocation, too. Lest it be misunderstood, though, **there is no second round of counting** at this stage. **We do not recompute** the number of votes obtained by each party nor the percentage of votes they garnered. **We do not tally the votes anew. We do not modify the data used in the first round.** Instead, **the number of votes cast for each party as determined in the first round is preserved precisely to ensure that all votes are counted only once.**

In her scholarly treatise, Senior Associate Justice Perlas-Bernabe elucidated:

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

It is petitioners' proposal -- the imposition of a deduction against the two-percenters at the start of the second round, which would actually result in a violation of the "one person, one vote" principle. They propose that all votes in favor of non-two-percenters would be counted and considered in both the first and second rounds, albeit whether they would be awarded a seat in Congress is a different matter altogether. Meanwhile, the 2% votes for two-percenters would be counted and considered in the first round, **but not in the second round**. This clearly puts the two-percenters at a glaring disadvantage even though they fared significantly better in the elections. Surely, this is not what the Legislature, nay, the framers of the Constitution intended. On the contrary, as will be discussed below, it is the two-percenters who have an established right to an advantage in the form of a guaranteed seat.

b. The rule of law has already acknowledged and confirmed the substantial distinction between two-percenters and non-two- percenters.

Section 1, Article III of the *Constitution* decrees that no person shall be denied equal protection of the laws. Although first among the fundamental guarantees enshrined in the Bill of Rights, the equal protection clause is not absolute. It does not prevent legislature from establishing classes of individuals or objects upon which different rules shall operate so long as the classification is not unreasonable.[38]

The distinction between two-percenters and non-two-percenters has long been settled in ***Veterans Federation Party v. COMELEC*** *(Veterans)*[39] where the Court affirmed the validity of the 2% voting threshold. *Veterans* effectively segregates and distinguishes between the two (2) classes, two-percenters and non-two-percenters. It explains the rationale behind the voting threshold and differential treatment, *viz.*:

> The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very essence of "representation." Under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them. **But to have meaningful representation, the elected**

[38] *Central Bank Employees Association v. Bangko Sentral ng Pilipinas,* 487 Phil. 531, 559 (2004), citing *Victoriano v. Elizalde Rope Workers' Union*, No. L-25246, 59 SCRA 54, 77-78 (September 12, 1974): "The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary."

[39] 396 Phil. 419 (2000).

> **persons must have the mandate of a sufficient number of people.** Otherwise, in a legislature that features the party-list system, the result might be the proliferation of small groups which are incapable of contributing significant legislation, and which might even pose a threat to the stability of Congress. Thus, even legislative districts are apportioned according to "the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" to ensure meaningful local representation.[40] *(Emphasis added)*

The differential treatment arising from the recognition of the 2% voting threshold goes all the way to the legislative deliberations cited in *Veterans*. As borne by the Senate records on RA 7941:

> SENATOR GONZALES: For purposes of continuity, I would want to follow up a point that was raised by, I think, Senator Osmeña when he said that **a political party must have obtained at least a minimum percentage to be provided in this law in order to qualify for a seat under the party-list system.**
>
> They do that in many other countries. A party must obtain at least 2 percent of the votes cast, 5 percent or 10 percent of the votes cast. **Otherwise, as I have said, this will actually proliferate political party groups and those who have not really been given by the people sufficient basis for them to represent their constituents and, in turn, they will be able to get to the Parliament through the backdoor under the name of the party-list system**, Mr. President.[41] (emphasis added)

The basis for the differential treatment was not lost even upon the framers of our *Constitution* who had a minimum-vote requirement in mind. The Constitutional Commission did not envision that every constituency or every valid vote cast for a party-list organization shall be represented in the House. Commissioner Christian Monsod, who Justice Gesmundo extensively quoted, saw the need to impose a threshold on the number of valid votes cast for a party-list organization. Stated differently, Commissioner Monsod wanted a party-list system that qualifies only those party-list organizations that meet some pre-determined constituency. In Commissioner Monsod's example, he pegged a party-list organization's legitimate constituency at 2.5% of the total valid votes cast for the party-list elections. Thus:

> When such parties register with the COMELEC, we are assuming that 50 of the 250 seats will be for the party list system. So, we have a **limit of 30 percent** of 50. That means' that **the maximum that any party can get out of** these 50 seats is 15. When the parties register they then submit a list of 15 names. They have to submit these names because these nominees have to meet the minimum qualifications of a Member of the National Assembly. At the end of the day, when the votes are tabulated, **one gets the percentages**. Let us say, UNIDO gets 10 percent or 15 percent of the votes; KMU gets 5 percent; a women's party gets 2 1/2 percent and anybody who has at least 2 1/2 percent of the vote qualifies and the 50 **seats are**

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[40] *Id.* at 441.

[41] II Record of the Senate 145, Second Regular Session, Ninth Congress.

apportioned among all of these parties who get at least 2 1/2 percent of the vote.

What does that mean? It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly. **It also means that, let us say, there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly.** Those are the dynamics of a party list system.

We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that **those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly**. These sectors or these groups **may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.**

The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide; have about 1,000,000 or 1,500,000 votes. But they were always third place or fourth place in each of the districts. So, they have no voice in the Assembly. **But this way, they would have five or six representatives in the Assembly even if they would not win individually** in legislative districts. So, that is essentially the mechanics, the purpose and objectives of the party list system.

x x x x

MR. MONSOD. x x x We are amenable to modifications in the minimum percentage of votes. Our proposal is that anybody who has two-and-a-half percent of the votes gets a seat. There are about 20 million who cast their votes in the last elections. Two-and-a-half percent would mean 500,000 votes. Anybody who has a constituency of 500,000 votes nationwide deserves a seat in the Assembly. If we bring that down to two percent, we are talking about 400,000 votes. The average vote per family is three. So, here we are talking about 134,000 families. We believe that there are many sectors who will be able to get seats in the Assembly because many of them have memberships of over 10,000. In effect, that is the operational implication of our proposal. What we are trying to avoid is this selection of sectors, the reserve seat system. We believe that it is our job to open up the system and that we should not have within that system a reserve seat. We think that people should organize, should work hard, and should earn their seats within that system.[42]

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[42] II Record of the Constitutional Commission 256.

As held in *Veterans*, the voting threshold ensures that only those parties, organizations, and coalitions *having a sufficient number of constituents* deserving of representation are actually represented in the House of Representatives.[43] This is the distinction between two-percenters and non-two-percenters. Of course, there are other parameters in determining ultimately party-list representation in the bigger chamber of Congress.

Justice Leonen drew us to the comparison of our country's party-list system to German elections, thus:

> The Party-List System Act's stipulation of an initial two-percent (2%) threshold serves a vital interest by filtering party-list representation to those groups that have secured the support of a sufficiently significant portion of the electorate.
>
> Our elections for the House of Representatives is akin to elections for the German Bundestag (federal parliament) where voters similarly cast a first vote or "Erststimme" for district representative (which follows a first-past-the-post system), and a second vote or "Zweitstimme" for a political party. For a party to occupy seats, it must secure a five percent (5%) threshold (n.b., more than doubly higher than our standard). This threshold "excludes very small parties from parliamentary participation." This exclusionary effect is deliberate and far from an inadvertent consequence: "[t]his system was put in place to prevent smaller splinter parties – like those that booged down the Weimar Republic in the 1920s – from entering parliament." (citations omitted)

In light of the substantial distinctions held valid by the Court and the framers of the *Constitution vis-a-vis* RA 7941, the questioned provision, Section 11(b), RA 7941, as couched, allows "those garnering more than two percent (2%) of the votes x x x additional seats in proportion to their total number of votes," conveying the intention of Congress to give preference to the party-list seat allocation to two-percenters. Consequently, in *Veterans*, only the thirteen (13) party-lists which obtained at least 2% of the total votes cast in the party-list system were allowed to participate in the distribution of additional seats.

The *Veterans* formula which excluded non-two-percenters in the allocation of additional seats was sustained in ***Ang Bagong Bayani-OFW Labor Party v. Commission on Elections***[44] in relation to the 2001 elections, and in ***Partido Ng Manggagawa v. Commission on Elections***[45] and ***Citizens' Battle Against Corruption v. Commission on Elections***[46] both in relation to the 2004 elections.

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[43] Supra note 39, at 439.
[44] G.R. Nos. 147589 & 147613 (Resolution), [February 18, 2003]).
[45] 519 Phil. 644 (2006).
[46] 549 Phil. 767 (2007).

c. The ruling in *BANAT* did not remove the distinction between two-percenters and non-two percenters.

In *BANAT, as a result of the other parameters which have to be considered in determining ultimately the composition of party-list representation in the House of Representatives*, the Court declared the 2% threshold as unconstitutional **but only insofar as it makes the 2% threshold as exclusive basis for computing the grant of additional seats**. The Court maintained the 2% threshold for the first round of seat allocation to ensure a guaranteed seat for a qualifying party-list party, organization, or coalition. As the basis for the additional seats is proportionality to the total number votes obtained by each of the participating party, organization, or coalition, however, it was inevitable that the number of votes included in computing the 2% threshold would have to be still factored in in allocating the party-list seats among all the participating parties, organizations, or coalitions.

To stress, the nullification of the 2% threshold for the second round was not meant to remove the distinction between two-percenters and non-two-percenters. The nullification was not for any undue advantage extended to two-percenters. Rather, the rationale for the second round was to fulfill the constitutional mandate that the party-list system constitute 20% percent of the total membership in the House of Representatives, within the context of the rule of proportionality to the total number of votes obtained by the party, organization, or coalition.

Indeed, completing the 20% party-list composition in the bigger house of Congress would have been extremely difficult to achieve, nay, mathematically impossible, if ***only*** the 2% threshold and the three-seat cap were the considerations in place for determining a party-list seat in Congress.[47] As a result, in compliance with the 20% constitutional number, the Court in *BANAT* opened the allocation of additional seats even to non-two-percenters. The Court, nevertheless, recognized that the 2% votes should still form part of the computation for the seats in addition to the guaranteed seat.

For better appreciation, assume that party-list X garnered exactly 2% of the votes cast for the party-list system. Indubitably, it is guaranteed a seat in the first round of allocation. For the second round, its 2% vote will still be intact and will serve as the multiplier to the remaining number of seats after the first round of distribution.

In petitioners' proposal, however, a 2% deduction will be imposed against party-list X before proceeding to the second round. This would result

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[47] In *Veterans*, only fourteen (14) of the fifty-one (51) party-list seats were awarded.

in X falling to the bottom of the ranking with zero percent (0%) vote, dimming its chances, if not disqualifying it altogether, for the second round.[48] This is **contrary to the language of the statute which points to proportionality in relation to the TOTAL number of votes received** by a party, organization or coalition in the party-list election, and the **intention** behind the law **to acknowledge the two-percenters' right to participate in the second round of seat allocation for the additional seats.**

Justice Leonen has a keen analysis of the adverse effect of imposing a two percent (2%) deduction on the two-percenters:

> Ignoring votes in the reckoning of proportions runs afoul of a party-list election as a race contested by the entire roster of candidates and won in consideration of all the votes cast by the electorate. Reckoning on the basis of a "recomputed number of votes" artificially redraws the electoral terrain. It results in the distribution of remaining party-list seats based on an altered field of contestants and diminished number of votes. This undoes the logical advantage earned by those that hurdled the two-percent-threshold and enables the election of groups even if their performance was manifestly worst off than those who have hurdled the basic threshold. To concede petitioners' plea would be to negate the valid and sensible distinction between those that hurdled the threshold and those that did not. Ultimately, it violates the party-list system's fundamental objective of enabling "meaningful representation [secured through] the mandate of a sufficient number of people." (citations omitted)

In concrete terms, 1PACMAN, MARINO and PROBINSYANO AKO were ranked 6th, 7th, and 8th, respectively, based on the number of votes they garnered in the 2019 elections, thus:

Rank	Party-list	Acronym	Votes	% Votes
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	1 PACMAN	713,969	2.56
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44
8	PROBINSYANO AKO	PROBINSYANO AKO	630, 435	2.26

Meanwhile, petitioners were ranked 52-54, *viz.*:

52	AKSYON MAGSASAKA – PARTIDO TINIG NG MASA	AKMA-PTM	191,804	0.69
53	SERBISYO SA BAYAN PARTY	SBP	180,535	0.65

[48] It will not be entitled to a factional seat since any number multiplied by zero is zero.

54	ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC,	ANGKLA	179,909	0.65

But with petitioners' proposed imposition of a 2% penalty, 1PACMAN, MARINO and PROBINSYANO AKO would drop to ranks 59, 71 and 89:

Rank after penalty	Party-list	Acronym	% Votes after penalty
58	APPEND, INC.	APPEND	0.57
59	**ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS**	**1 PACMAN**	**0.56**
60	ANAKPAWIS	ANAKPAWIS	0.53

x x x x

70	MURANG KURYENTE PARTYLIST	MURANG KURYENTE	0.46
71	**MARINO SAMAHAN NG MGA SEAMAN, INC.**	**MARINO**	**0.44**
72	UNA ANG EDUKASYON	1-ANG EDUKASYON	0.43

x x x x

88	1 ALLIANCE ADVOCATING AUTONOMY PARTY	1AAAP	0.27
89	**PROBINSYANO AKO**	**PROBINSYANO AKO**	**0.26**
90	AGBIAG!TIMPUYOG ILOCANO, INC.	AGBIAG!	0.25

x x x x

Otherwise stated, petitioners would have themselves prioritized in the seat distribution at the expense of 1PACMAN, MARINO and PROBINSYANO AKO though the latter had obtained almost **quadruple** the number of votes petitioners acquired.

For perspective though, a total of 134 party-lists participated in the 2019 elections. Only eight (8) of them, however, were able to hurdle the 2% threshold and were consequently awarded a guaranteed seat each. Collectively, these two-percenters were awarded a total of 18 out of the 61 seats reserved for the party-list system. Meanwhile, 43 seats were given to the non-two-percenters.

Under *Veterans*, only the eight (8) two percenters would have been entitled to participate in the second round of seat allocation. But this is no longer the case since *BANAT* lent a hand to non-two-percenters, allowing them to earn congressional seats in the second round of allocation. Yet, dissatisfied with just the hand, *i.e.* the 43 seats ultimately allocated to non-two-percenters, petitioners want more. They seek to impose a 2% deduction

against the two-percenters and reduce the latter's chances of getting an additional seat though it was established in *Veterans* and the cases in affirmance thereof that the **second round of seat allocation was intended to be exclusive to two-percenters and the two-percenters were meant to participate therein with their votes intact.** Were it not for the Court's ruling in *BANAT,* the tail-end of seat allocation would not have been opened to non-two-percenters.

The learned Justice Henri Jean Paul B. Inting aptly opined:

> The reason why the two-percenters are still entitled to additional seats based on the total number of votes even though the same number of votes were already included in the computation in the first round is not difficult to discern. The treatment accorded to the two-percenters in BANAT formula is a way of expressing the Congress' intent to implement cause/interest or functional representation based on the mandate of greater number of individuals. It should be stressed that the party-list system is a means of granting representation to major political interest groups "in as direct a proportion as possible to the votes they obtained" such that "the composition of the legislature closely reflects or mirrors the actual composition of the larger society". In other words, since more people believe in the cause, advocacy, and platforms of the two-percenters, they are given additional seats in Congress.
>
> If the proposition of the petitioners to exclude the number of votes that have qualified the two-percenters their guaranteed seat in the second round of seat allocation will be followed, there will be diminution of the party's ability to advance its cause, advocacy, and platforms despite being supported by greater number of people. This will effectively defeat the intent of the legislators for a party-list organization to be meaningfully represented by a sufficient number of people with common cause and advocacy. Petitioner's proposition will likewise result in a proliferation of small political party groups who have not really been given by the people sufficient basis for them to represent their constituents in Congress and in turn, will be able to get to the legislative body through the backdoor under the name of the party-list system.
>
> Consequently, the two-percenters and non-two-percenters will practically obtain the same number of seats, disregarding the substantial distinction between them and defeating the purpose of the party-list system as a means of granting representation to major political interest groups in such a way that the composition of the legislature reflects the actual composition of the larger society. Also, the proposition will diminish the votes garnered by the two-percenters resulting in a weaker voice in Congress despite the fact that they were supported by greater number of people.

Petitioners nevertheless propose to the Court a different reading of *BANAT* to support their theory. But this is not possible. *BANAT* is clear. A reproduction of the full paragraph from the *Resolution* dated July 8, 2009 is *apropos*:

> In the table above, CIBAC cannot claim a third seat from the seat allocated to TUCP, the last ranked party allocated with a seat. CIBAC's 2.81% (from the percentage of 4.81% less the 2% for its guaranteed seat) has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03. **The fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties.** Thus, for purposes of the second step in the second round of seat allocation, TUCP has a higher rank than CIBAC. (emphasis added)

Surely, *BANAT* instructs that 2% shall be deducted from the percentage votes of party-lists that obtained a guaranteed seat. *This deduction, however, is done in the* **second step of the second round** *of seat allocation*, **not in the first step of the second round** as petitioners would have the Court believe. Hence, the application of *BANAT* to party-list seat allocation, **as earlier outlined in this Decision** stands.

Equal weight for each vote can only be achieved through absolute proportionality which the Constitution does not require.

Petitioners' own proposal fails to meet their demand of equality. The fact that petitioners have agreed to the distribution of party-list seats in two (2) rounds using two (2) different formulae is a tacit recognition that the votes will not after all be given equal weight.

The only way to achieve equal weight for each vote is if the seats are to be distributed based on *absolute* proportionality *from the beginning*, that is:

$$\frac{\text{Number of votes obtained by a Party-list}}{\text{Total number of votes cast under the party-list system}} \times \text{Number of seats for the party-list system} = \text{Seat allocation}$$

Section 11, Article VI of the *Constitution*, however, does not prescribe absolute proportionality in distributing seats to party-list parties, organizations or coalitions. Neither does it mandate the grant of one seat each according to their rank. On the contrary, Congress is given a wide latitude of discretion in setting the parameters for determining the actual volume and allocation of party-list representation in the House of Representatives. *BANAT* elucidates:

> x x x The allocation of seats under the party-list system is governed by the last phrase of Section 5(1), which states that the party-list representatives shall be "those who, as provided by law, shall be elected through a party-

> list system," **giving the Legislature wide discretion in formulating the allocation of party-list seats.** Clearly, **there is no constitutional requirement for absolute proportional representation in the allocation of party-list seats in the House of Representatives.**[49] *(Emphasis added)*

In the exercise of this prerogative, Congress modified the weight of votes cast under the party-list system with reason.

Consider the **three-seat limit**. This ensures the entry of various interests into the legislature and bars any single party-list from dominating the party-list representation.[50] Otherwise, the rationale behind party-list representation in Congress would be defeated. But viewed from a different perspective, this safeguard dilutes, if not negates, the number of votes that a party-list party, organization, or coalition obtains.

To illustrate, ACT-CIS garnered 2,651,987 votes or 9.51% of the votes cast under the party-list system in the recently concluded elections which would have yielded it six (6) seats in Congress.[51] Otherwise stated, ACT-CIS had votes in excess of what was necessary for it to be awarded three (3) seats in Congress. Yet instead of considering these votes as wastes or a form of disenfranchisement against its voters, the Court does not consider this as a deviation from the "one person, one vote" principle.

Consider also the **two-tiered seat allocation**. This serves to maximize representation and fulfil the 20% requirement under Section 5(1), Article VI of the *Constitution*. Seen in a different light, however, this arithmetical allocation in practice **inflates** the weight of each of the votes considered in the second round, *as far as the non-two percenters are concerned*, but **deflates** the weight of each of the votes considered in the second round, *as regards the two-percenters*. This is because the two-percent (2%) vote-threshold needed to guarantee a seat in the House of Representatives **would definitely be more than the votes it would take to earn an additional seat**, whether we apply petitioners' proposal or the doctrine in *BANAT*.

If only to abide by the 20% requirement, there exist cogent reasons to accord varying weight to the votes each obtained by parties, organizations, or coalitions participating in the party-list election, in the two-round seat allocation. Not only does this method of seat allocation promote the broadest possible representation among the varied interests of party-list parties, organizations or coalitions in the House of Representatives, it also fulfils the constitutional fiat that 20% of the composition of the bigger house of Congress to be allotted for party-list representatives.

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[49] Supra note 33.
[50] Supra note 39.
[51] One guaranteed seat plus five additional seats [(61 party-list seats available – 8 seats allocated in the first round) x 9.51% = 5.04].

As demonstrated, **the three-seat cap and the two-tiered seat allocation are disadvantageous to the two-percenters and beneficial to non-two-percenters**. These serve to balance the advantage acquired by the two-percenters in the form of a guaranteed seat. Yet, petitioners remain dissatisfied.

Although petitioners' proposed formula may result in a *formal equality* between two percenters and non-two percenters, it is **actually an equality that violates the equal protection of the laws** because **the formula disregards the long-held valid distinction between two-percenters and non-two percenters**. It would be an equality, unjustified by any rationale, between what the Constitution has actually envisioned to favor, those who possess the constituency threshold, and those who do not possess this threshold.

Summary

The only instance every vote obtained in a party-list election can be given equal weight is when the allocation of party-list seats in the House of Representatives is based on absolute proportionality. But this is not required under, nor the system envisioned in, Section 5(1), Article VI of the *Constitution*. Instead, the manner of determining the volume and allocation of party-list representation in the House of Representatives is left to the wisdom of Congress.

Heeding the call of duty, Congress enacted RA 7941. Its features preclude the allocation of seats based solely on absolute proportionality (1) to bar any single party-list party, organization or coalition from dominating the party-list system, and (2) to ensure maximization of the allotment of 20% of seats in the House of Representatives to party-list representatives.

Too, RA 7941 ordains a two-tiered seat allocation wherein those who reach the 2% threshold are guaranteed seat in the first round and get to keep their votes intact for the first stage of the second round. To recall, the original application of RA 7941 in *Veterans* limited the allocation of guaranteed and additional seats to two-percenters alone. Though the Court opened the system to non-two percenters, this was *only* to abide by the 20% composition decreed by the Constitution. Given the reasonable distinction between two-percenters and non-two-percenters, we see no cogent reason to nullify their advantage.

But this is not to say that there is a double counting of votes in favor of the two-percenters. Ultimately, **each vote is counted only once**. All votes are tallied at the beginning of the *BANAT* formula.

Just because a party-list was allocated a guaranteed seat and an additional seat does not mean that its votes were counted twice. It just means that the party-list concerned surpassed the proportional thresholds prescribed under the law in both rounds of seat allocation. Similarly, just because a

party-list is not awarded a guaranteed seat or an additional does not mean that its votes were not counted. Failure of a party-list to obtain a seat only means one thing – it lost the elections. It was outvoted or outperformed by other party-lists. It was simply left without a seat in the game of musical chairs. Under these circumstances, their remedy is not to wrest others of their allocated seats by changing the rules of the game, but by doing better in the subsequent elections.

The rules of the game are laid down in RA 7941. As stated, the *BANAT* formula mirrors the textual progression of Section 11(b) of the law. The *BANAT* formula withstood the test of time and the Court is offered no cogent reason to depart therefrom.

Notably though, the Members of the Court voted 7-3-3-1. This *ponencia,* therefore, could hardly be considered a clear victory in favor of respondents. Seven (7) Members of the Court voted to dismiss the petition while seven (7) opined that Section 1(b) of RA 7941 vis-a-vis *BANAT* ought to be partly nullified. Three (3) of these dissenters adopted petitioners' proposed formula, three others adopted a different formula, and one (1) adopted still another formula. In fine, the dissenters are also dissenting among themselves on the "correct" formula to be adopted should the Court grant the petition.

Surely, it is not for the Court to recalibrate the formula for the party-list system to obtain the "broadest representation possible" and make it seemingly less confusing and more straightforward. This is definitely a question of wisdom which the legislature alone may determine for itself. Perhaps, after twenty-five (25) years following the enactment of RA 7941, it is high time for Congress to take a second hard look at Section 11(b) for the purpose of addressing once and for all the never-ending issue of seat allocation for the party list system. We do not write policies, simply this is not our task. Our forebears have said it once and several times over, we say it again:

> We do not sit in judgment as a supra-legislature to decide, after a law is passed by Congress, which state interest is superior over another, or which method is better suited to achieve one, some or all of the state's interests, or what these interests should be in the first place. This policy-determining power, by constitutional fiat, belongs to Congress as it is its function to determine and balance these interests or choose which ones to pursue. Time and again we have ruled that the judiciary does not settle policy issues. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all state power....[52]

ACCORDINGLY, the Amended Petition and Petition-in-Intervention are **DENIED** for lack of merit. The Court **declares as NOT**

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[52] *British American Tobacco v. Camacho*, 584 Phil. 489, 547-548 (2008).

UNCONSTITUTIONAL Section 11(b), RA 7941 pertaining to the allocation of additional seats to party-list parties, organizations, or coalitions in proportion to their respective total number of votes. Consequently, National Board of Canvassers Resolution No. 004-19 declaring the winning party-list groups in the May 13, 2019 elections is upheld.

Let copy of this Decision be furnished to the House of Representatives and the Senate of the Philippines as reference for a possible review of RA 7941, specifically Section 11(b), pertaining to the seat allocation for the party-list system.

SO ORDERED.

AMY C. LAZARO- JAVIER
Associate Justice

WE CONCUR:

I join the dissenting opinion of J. Gesmundo

DIOSDADO M. PERALTA
Chief Justice

Please see Separate Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

See separate concurring opinion

MARVIC M.V.F. LEONEN
Associate Justice

See Separate Opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

With separate dissenting opinion

ALEXANDER G. GESMUNDO
Associate Justice

I join the Dissent of Justice Gesmundo

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

Pls. see dissenting opinion

RODIL V. ZALAMEDA
Associate Justice

Pls. see concurring and dissenting opinion

MARIO V. LOPEZ
Associate Justice

I join the dissent of Justice Rodil Zalameda.

EDGARDO L. DE LOS SANTOS
Associate Justice

I join the dissent of J Rodil Zalameda

SAMUEL H. GAERLAN
Associate Justice

(on leave)
PRISCILLA J. BALTAZAR - PADILLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court