G.R. No. 246816 – 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, ET AL.,** *respondents;* **AKSYON MAGSASAKA – TINIG PARTIDO NG MASA (AKMA-PTM),** *petitioner-in-intervention.*

Promulgated:

September 15, 2020

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SEPARATE OPINION

CAGUIOA, *J.*:

I concur only insofar as the petitions are dismissed — but with a call, that the allocation of party-list seats laid down in *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections,*[1] (*BANAT*) should be abandoned as it is inconsistent with, and fails to reflect, the spirit and intent of the Constitution and Republic Act No. (RA) 7941 or the Party-List System Act.[2]

The present Petition and the BANAT formula

The party-list system was an innovation introduced by the drafters of the Constitution to diversify representation in the House of Representatives (HOR). It was meant to "open the system," in recognition of the real need to provide an effective platform to those who belong to marginalized sectors of society, such as labor, peasant, urban poor, indigenous cultural communities, women, and youth,[3] and also to provide an avenue to those who had been unable to gain seats in the legislature because of the dominance of the traditional and well-established political parties. Since the first national elections involving the party-list system in 1998, the election, qualifications, and allocation of seats to party-list organizations (PLO) and their nominees have been the subject of petitions before the Court.

This time, petitioners Ang Partido ng Mga Pilipinong Marino, Inc. (ANGKLA) and Serbisyo sa Bayan Party (SBP) and petitioner-intervenor Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTM) (petitioners) propose a new formula in computing the allotted seats for PLOs in the HOR

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1. G.R. Nos. 179271 & 179295, April 21, 2009, 586 SCRA 210.
2 Approved on March 3, 1995.
3 1987 CONSTITUTION, Art. VI, Sec. 5(2).

after failing to obtain a congressional seat in the May 2019 National and Local Elections (2019 Elections).

The procedure for allocation of seats in the party-list system is provided in RA 7941, which states:

> SEC. 11. *Number of Party-List Representatives.* — The party-list representatives shall constitute twenty *per centum* (20%) of the total number of the members of the House of Representatives including those under the party-list.
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> For purposes of the May 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 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.
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> SEC. 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.

In interpreting Section 11, the Court in *Veterans Federation Party v. Commission on Elections* (*Veterans*),[4] formulated the following parameters:

> *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;

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[4] G.R. Nos. 136781, 136786 & 136795, October 6, 2000, 342 SCRA 244.

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."[5]

Veterans also produced the "First Party Rule," which gave preference to the PLO that obtained the highest number of votes and used the number of votes garnered by the party obtaining the highest number of votes as a benchmark in determining the seats to be allocated to the rest of the PLOs.

The above parameters were revised in *BANAT,* where the Court declared unconstitutional the two percent threshold for the distribution of "additional seats" in the second proviso of Section 11(b)[6] of RA 7941 as it made it mathematically impossible to achieve the maximum number of available party-list seats (APLS) when the APLS exceeded 50.[7] The Court also abandoned the First Party Rule, devising instead a three-tier approach which allowed more party-list participation in the legislature as party-list seats were to be allocated even to those parties who did not obtain at least two percent of the total party-list votes. The following procedure was thus adopted:

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5   Id. at 276-277.
6   SEC. 11. X X X
      X X X X
      In determining the allocation of seats for the second vote, the following procedure shall be observed:
      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 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.
7   *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections,* supra note 1, at 242-243. The Court in *BANAT,* explained the mathematical impossibility in this wise:
      We rule that, in computing the allocation of **additional seats,** the continued operation of the two percent threshold for the distribution of the additional seats as found in the second clause of Section 11 (b) of R.A. No. 7941 is **unconstitutional.** This Court finds that the two percent threshold makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50. The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives.
      To illustrate: There are 55 available party-list seats. Suppose there are 50 million votes cast for the 100 participants in the party list elections. A party that has two percent of the votes cast, or one million votes, gets a guaranteed seat. Let us further assume that the first 50 parties all get one million votes. Only 50 parties get a seat despite the availability of 55 seats. Because of the operation of the two percent threshold, this situation will repeat itself even if we increase the available party-list seats to 60 seats and even if we increase the votes cast to 100 million. Thus, even if the maximum number of parties get two percent of the votes for every party, it is always impossible for the number of occupied party-list seats to exceed 50 seats as long as the two percent threshold is present.

1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.

3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.

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

In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two-percenter. Thus, the remaining available seats for allocation as "additional seats" are the maximum seats reserved under the Party List System less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats.

In declaring the two percent threshold unconstitutional, we do not limit our allocation of additional seats in Table 3 below to the two-percenters. The percentage of votes garnered by each party-list candidate is arrived at by dividing the number of votes garnered by each party by 15,950,900, the total number of votes cast for party-list candidates. 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, x x x[8]

Simplified, the above formula for distribution is as follows:

1.   The PLOs shall be ranked from highest to lowest according to their respective votes;

2.   The votes garnered by each party shall be divided by the total party-list votes to determine the percentage of votes per PLO;

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[8]   Id. at 243-244.
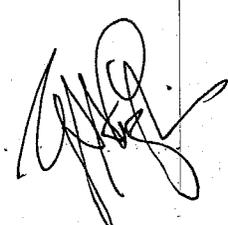
3. *Allocation of guaranteed seats for the two percenters* - Those PLOs which garnered at least two percent of the total party-list votes shall be entitled to a "guaranteed seat;"

4. The guaranteed seats already distributed to the two percenters shall be deducted from the APLS to determine the remaining available seats;

5. *Allocation of additional seats for two percenters* - The additional seats for the two percenters shall be determined by multiplying the percentage of votes garnered by the two percenters to the remaining available seats; the whole integer of the product shall determine the additional seat, if any (subject to the three-seat cap);

6. *Allocation of the remaining available seats for the non-two percenters* - The remaining available seats after distributing the guaranteed seats and additional seats to the two percenters shall be distributed one seat each to the non-two percenters until all remaining available seats have been allocated.

Using the above formula, the Commission on Elections (COMELEC), acting as the National Board of Canvassers (NBC), issued Resolution No. 004-19 declaring the winners in the party-list system for the 2019 Elections. Petitioners failed to obtain any seats. Thus, they present a new formula which will enable them to obtain seats.

Petitioners propose that in the determination of additional seats for the two percenters in Step 5, the percentage of their votes should be deducted by two percent — since the two percent has "already been counted" in Step 3. According to petitioners, the non-deduction of two percent in the allocation of additional seats for two percenters results in "double counting" of votes. Petitioners also pray that the Court declare unconstitutional the following underscored phrase in the sentence in Section 11(b) of RA 7941: "[T]hose garnering more than two percent (2%) of the votes shall be entitled to additional seats <u>in the proportion to their **total** number of votes.</u>"[9] Petitioners assert that this results in discrimination against the non-two percenters, depriving them of rightful seats in the HOR.[10]

Cited by petitioners is the Court's Resolution in *BANAT* promulgated on July 8, 2009, which resolved the Motion for Clarification of then HOR Speaker Prospero C. Nograles and a separate Motion for Leave for Partial Reconsideration of PLO Citizen's Battle Against Corruption (CIBAC). A revision of the list of winning PLOs was necessary due to the reduction in the number of legislative districts pending resolution of the case (when the Court invalidated the creation of the province of Shariff Kabunsuan) and after the Court received updated data from a more recent Party-List Canvass

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[9] Underscoring supplied.
[10] Amended Petition, *rollo*, pp. 107-142.

Report which had not been submitted by the parties earlier.[11] Petitioners bring the Court's attention to the following portion in the July 8, 2009 Resolution:

> 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.[12] (Emphasis supplied)

Petitioners invoke the above disquisition to support their position which appears to mandate that two percent be deducted from a two percenter's total votes in determining their additional seat.

The formula forwarded by petitioners will result in a smaller multiplier and smaller product: thereby allocating fewer seats to the two percenters, which would then result in an increase in the number of remaining available seats for PLOs that would not have been able to qualify for one seat.

The COMELEC, through the Office of the Solicitor General (OSG), filed its Comment, maintaining that there is no "double counting" of votes as the votes are counted in two separate rounds of seat allocation. The first round is the allocation of the guaranteed seats for two percenters and the second round is the allocation of the additional seats.[13] There would only be double counting if the same votes were counted twice for the same round. The OSG also asserts that there is no violation of the equal protection clause against the non-two percenters because there is substantial distinction between the former and the two percenters, who obtained the "clearer mandate of the people" by receiving more votes.[14]

The *ponencia* dismisses the petitions. On the procedural issue, the *ponencia* holds that petitioners failed to satisfy all the requirements of judicial review in failing to raise the issue of constitutionality in the first instance and that the issue on constitutionality is not the very *lis mota* of the case.[15] On the substantive issue, the *ponencia* holds that Section 11(b) of RA

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[11] 592 SCRA 294.
[12] Id. at 310-311.
[13] *Rollo*, p. 192.
[14] Id. at 193.
[15] *Ponencia*, pp. 8-15.

7941 is constitutional and maintains the formula developed by the Court in *BANAT.*

With the foregoing considerations, and without belaboring the issues on judicial review and constitutionality, I find merit in ANGKLA's position that the *BANAT* formula results in the "double counting" of votes in the computation of additional seats for the two percenters. Specifically, their first two percent already entitles them to a seat, and yet, in the allocation of the remaining seats, the said votes are still taken into consideration.

As will be shown herein, the *BANAT* formula suffers from a misinterpretation of the first part of Section 11(b) of RA 7941 that led it to have two rounds of allocation of seats, even when the law clearly does not require the same. More importantly, the *BANAT* formula fails to reflect the State policies embodied in RA 7941 and in the Constitution.

That said, I do not agree with petitioners' formula as it is not sanctioned by the plain text of Section 11(b) of RA 7941, which provides that the additional seats shall be computed **in proportion to the PLO's total number of votes.** Thus, I am submitting instead a different formula that would better reflect the intent behind the introduction of the party-list system in the Constitution, while remaining consistent with the letter of Section 11(b) of RA 7941.

The spirit and intent behind the party-list system

As mentioned, the party-list system is an innovation in the 1987 Constitution meant to "open the system" that has long been dominated by the large political parties. Commissioner Christian S. Monsod (Commissioner Monsod), the main proponent of the party-list system, explained the objectives of the party-list system in the following exchange:

> BISHOP BACANI. I thank the Honorable Villacorta for the very beautiful defense of the idea of a sectoral representation, but I am already in basic sympathy with that. I want that myself. Only, I want to ask what sectors will be included. Will it be the farmers, teachers, et cetera? What will be the criteria or the bases for the creation of recognition of the sectors that will be represented in the Assembly?

> MR. DAVIDE. Madam President, on the matter of the sectoral representation and the mechanics for the implementation thereof, the Committee had left it to a law to implement the same. That is why the provision here reads: "and those who, as provided by law, shall be elected from the sectors and party list." The law itself implementing this will provide which sectors to be represented.

> BISHOP BACANI. How will we determine these sectors?
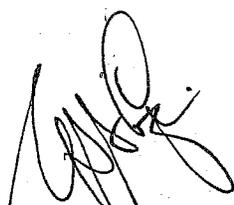
MR. DAVIDE. Madam President, since this is also on the matter of the party list, may we seek the recognition of Commissioner Monsod for the question of Commissioner Bacani.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. Thank you, Madam President.

I would like to make a distinction from the beginning that **the proposal for the party list system is not synonymous with that of the sectoral representation. Precisely, the party list system seeks to avoid the dilemma of choice of sectors and who constitute the members of the sectors.** In making the proposal on the party list system, we were made aware of the problems precisely cited by Commissioner Bacani of which sectors will have reserved seats. In effect, a sectoral representation in the Assembly would mean that certain sectors would have reserved seats; that they will choose among themselves who would sit in those reserved seats. And then, we have the problem of which sector because as we will notice in Proclamation No. 9, the sectors cited were the farmers, fishermen, workers, students, professionals, business, military, academic, ethnic and other similar groups. So these are the nine sectors that were identified here as "sectoral representatives" to be represented in this Commission. The problem we had in trying to approach sectoral representation in the Assembly was whether to stop at these nine sectors or include other sectors. And we went through the exercise in a caucus of which sector should be included which went up to 14 sectors. And as we all know, the longer we make our enumeration, the more limiting the law becomes because when we make an enumeration we exclude those who are not in the enumeration. Second, we had the problem of who comprise the farmers. Let us just say the farmers and the laborers. These days, there are many citizens who are called "hyphenated citizens." A doctor may be a farmer; a lawyer may also be a farmer. And so, it is up to the discretion of the person to say "I am a farmer" so he would be included in that sector.

The third problem is that when we go into a reserved seat system of sectoral representation in the Assembly, we are, in effect, giving some people two votes and other people one vote. We sought to avoid these problems by presenting a party list system. Under the party list system, there are no reserved seats for sectors. Let us say, laborers and farmers can form a sectoral party or a sectoral organization that will then register and present candidates of their party. How do the mechanics go? Essentially, under the party list system, every voter has two votes, so there is no discrimination. First, he will vote for the representative of his legislative district. That is one vote. In that same ballot, he will be asked: What party or organization or coalition do you wish to be represented in the Assembly? And here will be attached a list of the parties, organizations or coalitions that have been registered with the COMELEC and are entitled to be put in that list. This can be a regional party, a sectoral party, a national party, UNIDO, Magsasaka or a regional party in Mindanao. One need not be a farmer to say that he wants the farmers' party to be represented in the Assembly. Any citizen can vote for any party. At the end of the day, the COMELEC will then tabulate the votes that had been garnered by each party or each organization — one does not have to be a political party and register in order to participate as a party — and count the votes and from

there derive the percentage of the votes that had been cast in favor of a party, organization or coalition.

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 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.

<u>The purpose of this is to open the system.</u> **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.**

BISHOP BACANI. Madam President, am I right in interpreting that when we speak now of party list system though we refer to sectors, we would be referring to sectoral party list rather than sectors and party list?

MR. MONSOD. As a matter of fact, if this body accepts the party list system, we do not even have to mention sectors because the sectors

would be included in the party list system. They can be sectoral parties within the party list system.

BISHOP BACANI. Thank you very much.[16] (Emphasis and underscoring supplied)

The party-list system envisioned by Commissioner Monsod – one where even major political parties may participate as long as they organize along sectoral lines – was met with opposition. Some of the framers of the Constitution, namely Commissioners Joaquin G. Bernas and Jaime S.L. Tadeo, advocated for a party-list system that is reserved for the *marginalized* sectors of society.[17] To the opposition, the party-list system should complement the constitutional provisions on social justice, in that it would equalize political power by distributing power from those who traditionally have it to the underprivileged.[18] It was even argued that half of the seats in the party-list system should be permanently reserved to certain sectors to achieve the objective.[19]

While Commissioner Monsod was not opposed to the idea, he had difficulty operationalizing a purely sector-based party-list system:

MR. OPLE: It appears that the Commission, for historical reasons, suffers from a lack of knowledge about the party list system. I suppose that we are not really reinventing the wheel here when we incorporate a party list system as among the modes of selecting representatives of the people. Since Commissioner Monsod, for the reason that he has taken a keen interest in electoral science, if we might call it that way, seems to be the sole authority on the party list system as far as we can see this in the Commission, can he share with the Members of the Commission his knowledge of how the party list system works in its country of origin like Germany and Switzerland? As a general principle, does it contemplate making up through a party list for the general weakness of what Commissioner Villacorta calls the "marginalized" sectors, so that the preponderance of traditional parties is overcome and that the less-privileged sectors in society could have their own access to Congress?

In the case of Germany, I understand that the Greens, who otherwise would understand their chance at the beginning, had gotten there through a party list system.

Will Commissioner Monsod oblige by answering this question?

MR. MONSOD. Madam President, I do not presume to be an expert on the party list system. We are using the party list system in a generic sense. However, I believe Commissioner Ople himself is an expert on this. It is true that the party list system can specify those who may sit in it. In fact, if I remember right, in the case of Belgium, it was quite detailed. But if

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16 II RECORD, CONSTITUTIONAL COMMISSION 85-86 (July 22, 1986).
17 See RECORD, CONSTITUTIONAL COMMISSION 551-598 (August 1, 1986)
18 Id.
19 Id.

we take a look at that list, it seems that almost 90 or over 90 percent of the country's population would be qualified to be in the party list system because one of the general qualifications is that the member must be a holder of a secondary degree. **So, what I am saying is that the party list system can be designed in order to allow for an opening up of the system. My reservation with respect to what I would call a reserve seat system where we automatically exclude some sectors is the difficulty to make it operational.** At this point in time in our country, this is already a novel idea as it is. I believe that all of us really are not yet experts on this and we are still learning through the process. Thus, for us to introduce complications at this time might bring difficulty in implementation.

We can put a cap on the number of seats that a party or organization can have in the system consistent with our objective of opening it up. But to put the complication by saying, for instance, that UNIDO can register provided that 10 or 15 of its candidates must be farmers, laborers, urban poor and so on, I think would be very difficult to implement.

MR. OPLE. **So, Commissioner Monsod grants that the basic principle for a party list system is that it is a countervailing means for the weaker segments of our society, if they want to seek seats in the legislature, to overcome the preponderant advantages of the more entrenched and well-established political parties, but he is concerned that the mechanics might be inadequate at this time.**

MR. MONSOD. Not only that; talking about labor, for example — I think Commissioner Tadeo said there are 10 to 12 million laborers and I understand that organized labor is about 4.8 million or 4.5 million — if the laborers get together, they can have seats. With 4 million votes, they would have 10 seats under the party list system.

MR. OPLE. So, the Commissioner would favor a party list system that is open to all and would not agree to a party list system which seeks to accommodate, in particular, the so-called sectoral groups that are predominantly workers and peasants?

MR. MONSOD. If one puts a ceiling on the number that each party can put within the 50, and I am assuming that maybe there are just two major parties or three at the most, then it is already a form of opening it up for other groups to come in. All we are asking is that they produce 400,000 votes nationwide. **The whole purpose of the system is precisely to give room for those who have a national constituency who may never be able to win a seat on a legislative district basis. But they must have a constituency of at least 400,000 in order to claim a voice in the National Assembly.**[20] (Emphasis and underscoring supplied)

After much deliberation, however, a compromise was reached which was reflected in the wording of Section 5(2), Article VI of the

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[20]   II RECORD, CONSTITUTIONAL COMMISSION 258-259 (July 25, 1986).

Constitution.[21] The compromise was that half of the seats in the party-list system would be reserved for the marginalized sectors, but the "reserved system" persisted only for three consecutive terms after the ratification of the Constitution. In the wisdom of the framers, permanently reserving seats for the representatives of the marginalized sector would make it seem that the seats are being handed to the sectors on a silver platter.[22] Thus, to place the representatives of the marginalized sectors on equal footing with district representatives, the framers thought it would be best to not permanently reserve seats for them, and require them to participate in the elections side by side with other parties.[23] In recognition, however, of their relative disadvantage in terms of political power, the Constitution reserved seats for them for three consecutive terms to allow them, in the interregnum, "to become more self-reliant, to be able to forge horizontal links and coalitions with other sectors who are in search of new political values and a new political culture x x x that will provide countervailing force against elite party politics."[24]

While the proposal to perpetually limit the party-list system to the marginalized sectors was not adopted, what remains clear is that the objective of the system was to encourage **diversity of representation** in the HOR by allowing parties who may not be able to garner enough votes in a district, but may be able to get enough votes on a nationwide scale.

Thus, in enacting RA 7941 or the Party-List Act, Congress had in mind the very same objectives of the Constitution. In fact, the Explanatory Note of House Bill No. 3043, the progenitor bill of RA 7941, states:

> The above-quoted provision of the constitution [referring to Article VI, Section 5(1) and (2) of the Constitution] defines the basic aim of a representative government – **to attain the broadest possible representation of all interests in the country's law-making body. The introduction of the party-list system under the 1987 Constitution is geared towards the achievement of this goal.**
>
> Under the party-list system, each voter has two separate votes. The first vote which is cast for one of the candidates of a legislative district. The second vote is for one of the party-lists put up by the duly accredited parties by the Commission on Elections. The distribution of party-list seats is computed according to the Niemeyer method to determine the number of seats established for each accredited party.
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> **The party-list system is intended to democratize representation in the House of Representatives by enabling parties, organizations or**

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21 (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.
22 II RECORD, CONSTITUTIONAL COMMISSION 551-598 (August 1, 1986).
23 Id.
24 Id. at 577.

coalitions which are not strong enough to get a seat under the legislative district system to acquire proportional representation depending on the number of votes garnered. The under- or over-representation of certain sectors is minimized because unlike the plurality system which tend to be dominated by major political parties on account of its majority-votes-rule, the party-list system, through its proportional method of allocating seats, makes it possible for seats to be granted to a party even if it fails to achieve a majority of votes. Ample representation of basic sectors in the legislature with the end in view of enacting laws reflective of their needs and aspirations would indeed be a significant move towards a true democracy.

Approval of this bill is, therefore, earnestly urged.[25] (Emphasis and underscoring supplied)

As well, Representative Tito R. Espinosa (Representative Espinosa), in his Sponsorship Speech for House Bill No. 3043, stated:

In keeping with the policy of the State to evolve a **full and open party system in order to attain the** x x x **broadest possible representation of group interest in the government's lawmaking body,** the Committee on Suffrage and Electoral Reforms submits before you today House Bill No. 3043 which provides for the election of party-list representatives through the party-list system.

House Bill No. 3043 if enacted, will broaden the horizons for the institutionalization of democracy in the Philippine politics. For one, this vital legislative measure strengthens **democratic pluralism that gives premium on true grassroots representation. It encourages the free battle and market of ideas regardless of creed, race or ideology** which in the process would pave the way to the transformation of our electoral and party system into one that is based on issues and platforms and programs of actions not of personalities and platitudes.

Eventually, the integration of the party-list system or the active participation of political parties, coalitions and sectoral organization in the mainstream of Philippine political arena will significantly aid the political maturity of the Filipino people. Once fully realized, the adoption of the system coupled with the people's unswerving commitment and determination to the cause of democracy will signal the end or the withering away of culture of cult, the politics of patronage, of guns, goons and gold and enter the era of political culture that is liberating and humanizing.

Mr. Speaker, distinguished colleagues, I sincerely believe that the adoption of a party-list system among other electoral reform measures is a radical step that transcends beyond reform in the electoral processes. If enacted, this vital piece of legislation will serve as an effective tool in empowering our people who have been historically made powerless by a flawed and iterant electoral system and therefore unable to intervene on policies that often intrude on rather than improve their lives.

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[25] 9TH CONGRESS 4TH REGULAR SESSION, 3-4 (September 28, 1992).

With the institutionalization of the party-list, there is a great hope that the broad masses of our people will no longer be marginalized from the mainstream of decision making and governance.

In view of the foregoing, Mr. Speaker, distinguished colleagues, I therefore call upon this august Chamber to take a bold step in the name of democracy and in the name of the Filipino people whom we have vowed to serve by way of approving on second reading and eventually into law House Bill No. 3043.

Thank you, Mr. Speaker.[26] (Emphasis and underscoring supplied)

During the interpellations, Representative Espinosa confirmed that the objectives of the law are "to institutionalize a multiparty system in the Philippines and to equalize political power among the various political sectoral parties and organizations."[27] Similar to what happened in the deliberations of the constitutional provisions regarding the party-list system, the discussion on whether the system ought to be reserved to marginalized sectors once again came up. In clarifying that the system is not reserved to marginalized sectors, Representative Espinosa explained:

MR. JABAR. There is a phrase here under Section 2, Declaration of Principles, line 7, the phrase "all parties", may we be clarified as to what are the parties envisioned or contemplated under this particular section, Mr. Speaker?

MR. ESPINOSA. Yes, Mr. Speaker, Your Honor. All parties would refer to existing political parties and all organizations, group of persons or coalition groups.

MR. JABAR. In other words, all existing registered political parties, like the Lakas-NUCD-UMDP, the LDP, the NP, LP, PDP-Laban and so many other registered political parties can also participate in the party-list election. Am I correct, Mr. Speaker, Your Honor?

MR. ESPINOSA. That is right, Mr. Speaker, Your Honor.

MR. JABAR. Do you agree with me that in the 1987 Constitution, this particular provision on party-list system is being encouraged in order for the sectoral groupings or sectoral organizations to have equal representation or proportional representation in the House of Representatives?

MR. ESPINOSA. Not only equal, but the intention was to...

MR. JABAR. Proportional representation.

MR. ESPINOSA. **Not only proportional, but added to that is to attain the broadest possible representation, not just proportional, but**

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[26] HOUSE 9TH CONGRESS 65-67 (November 8, 1994).
[27] HOUSE 9TH CONGRESS 126 (November 22, 1994).

the **broadest possible representation**.[28] (Emphasis and underscoring supplied)

Clear from all the foregoing, therefore, is that the spirit that animates the party-list system is the hope that the widest range of ideas, beliefs, backgrounds, ideologies, and interests are represented in the HOR as much as possible.

A straightforward formula
better reflects the spirit behind
the party-list system

Proceeding from the above discussion, I find that the three-tier formula expressed in *BANAT* fails to reflect the intent behind the introduction of the party-list system. Section 2 of RA 7941 states that the "State shall develop and guarantee a full, free and open party system in order to attain the **broadest possible representation** of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and **shall provide the simplest scheme possible**."[29]

It is my considered view that these objectives will be best achieved by a straightforward formula in which allotted seats are determined by simply multiplying the percentage of votes garnered by the PLO with the APLS.

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

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

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

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

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

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[28] Id. at 152-153.
[29] Emphasis and underscoring supplied.

$$\begin{array}{ccc} \text{Percentage of votes} \\ \text{garnered x APLS} & = & \begin{array}{c} \text{Seat/s for the concerned} \\ \text{qualified PLO} \end{array} \end{array}$$

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

This step does away with the three-tier allocation in *BANAT*. In particular, it does away with the first round of allocation. In *BANAT*, the Court created two rounds of allocation because of its interpretation that "[t]he first clause of Section 11(b) of R.A. No. 7941 [which] states that 'parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each' x x x guarantees a seat to the two-percenters."[30] Thus, it created a first of two rounds of allocation where the two percenters would be given one (1) seat each.

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

Meanwhile, the second requirement of Section 11(b) – that the "additional seats" for those who obtained more than two percent of the total votes cast in the party-list system shall be in proportion to the total number of votes it obtained – is also complied with because the computation of additional seats for each of the two percenters is in direct proportion to the total number of votes they actually garnered.

Step Four. Allocation of remaining seats. If the APLS have not been fully exhausted after allocating seats to the two percenters (but still enforcing the 3 seat limit) – as is what is expected to happen because, as mentioned the APLS will always be more than fifty seats – the remaining seats shall then be allocated (one (1) seat each) to the parties next in rank (*i.e.*, those who did not get at least two percent of the total number of votes cast), until all the APLS are completely distributed.

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[30] Supra note 1, at 240.

During the deliberations, the *ponente* argued that the adoption of a straightforward formula would render nugatory the first clause of Section 11(b), RA 7941 – which provides that "[t]he 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" – and would amount to judicial legislation. In her Separate Concurring Opinion, Senior Associate Justice Estela M. Perlas-Bernabe opines that the straightforward formula fuses together the character of the guaranteed seats and additional seats, so that the separate provisions on guaranteed and additional seats would be rendered redundant and the advantageous position gained by the two percenters would be removed.

Respectfully, this is a wrong understanding of the straightforward formula. Under the straightforward formula, the two percenters will not be prejudiced or divested of their preferred status as they will still be entitled to a guaranteed seat as provided under the law. The additional seats, which are not guaranteed, will then be determined based on the proportion of their votes. As explained above, the first round of allocation of party-list seats for the two percenters is **not supported nor required by the letter of the law.** The law merely requires that PLOs which garnered 2% of the votes shall be entitled to one seat and that additional seats for those which garnered more than 2%, shall be computed in proportion to their number of votes.

It is, in fact, the *BANAT* formula that constitutes judicial legislation, and not the straightforward formula outlined above which, to repeat, is the more literal and harmonious interpretation of the plain text of Section 11(b) of RA 7941. As earlier discussed, the straightforward formula complies with the requirement of the first clause in Section 11(b) which guarantees two percenters one seat each while also complying with the proportionality rule in the second clause as the computation of additional seats for the two percenters is in direct proportion to the total number of votes they actually garnered.

Most importantly, the straightforward formula is the formula more in accord with the declared policy of Section 2 of RA 7941 for the State to develop and guarantee a full, free and open party system in order to attain the **broadest possible representation** of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and **provide the simplest scheme possible**.

Allocation of Party-List Seats
in the 2019 Elections based on
the Straightforward Formula

Below is the tabulation of the party-list seats in the 2019 Elections applying the straightforward formula:

RANK	PARTY	TOTAL VOTES	PERCENTAGE OF VOTES GARNERED (TOTAL VOTES GARNERED/ TOTAL VOTES CAST)	PERCEN-TAGE OF VOTES GARNERED x APLS (61)	TOTAL SEATS OF THE QUALIFIED PARTY-LIST (SUBJECT TO THE 3 SEAT LIMIT)	REMAINING APLS DISTRIBUTED TO NON-TWO PERCENTERS
1	ACT-CIS	2,651,987	9.5105	5.8014	3	
2	BAYAN MUNA	1,117,403	4.0072	2.4444	2	
3	AKO BICOL	1,049,040	3.7621	2.2949	2	
4	CIBAC	929,718	3.3341	2.0338	2	
5	ANG PROBINSYANO	770,344	2.7626	1.6852	1	
6	1PACMAN	713,969	2.5604	1.5619	1	
7	MARINO	681,448	2.4438	1.4907	1	
8	PROBINSIYANO AKO	630,435	2.2609	1.3791	1	
9	SENIOR CITIZENS	516,927	1.8538			1
10	MAGSASAKA	496,337	1.7800			1
11	APEC	480,874	1.7245			1
12	GABRIELA	449,440	1.6118			1
13	AN WARAY	442,090	1.5854			1
14	COOP NATCCO	417,285	1.4965			1
15	ACT TEACHERS	395,327	1.4177			1
16	PHILRECA	394,966	1.4164			1
17	AKO BISAYA	394,304	1.4140			1
18	TINGOG SINIRANGAN	391,221	1.4030			1
19	ABONO	378,204	1.3563			1
20	BUHAY	361,493	1.2964			1
21	DUTERTE YOUTH	354,629	1.2718			1
22	KALINGA	339,665	1.2181			1
23	PBA	326,258	1.1700			1
24	ALONA	320,000	1.1476			1
25	RECOBODA	318,511	1.1422			1
26	BH	288,752	1.0355			1
27	BAHAY	281,793	1.0106			1
28	CWS	277,940	0.9967			1
29	ABANG LINGKOD	275,199	0.9869			1
30	A TEACHER	274,460	0.9843			1
31	BHW	269,518	0.9665			1
32	SAGIP	257,313	0.9228			1
33	TUCP	256,059	0.9183			1
34	MAGDALO	253,536	0.9092			1
35	GP	249,484	0.8947			1
36	MANILA TEACHERS	249,416	0.8945			1
37	RAM	238,150	0.8540			1
38	ANAKALUSUGAN	237,629	0.8522			1
39	AKO PADAYON	235,112	0.8432			1
40	AAMBIS OOWA	234,552	0.8411			1
41	KUSUG	228,224	0.8185			1

	TAUSUG DUMPER						
42	PTDA	223,199	0.8004			1	
43	TGP	217,525	0.7801			1	
44	PATROL	216,653	0.7770			1	
45	AMIN	212,323	0.7614			1	
46	AGAP	208,752	0.7486			1	
47	LPGMA	208,219	0.7467			1	
48	OFW FAMILY	200,881	0.7204			1	
49	KABAYAN	198,571	0.7121			1	
50	DIWA	196,385	0.7043			1	
51	KABATAAN	195,837	0.7023			1	
52	AKMA-PTW	191,804	0.6878			1	
53	SBP	180,535	0.6474			1	
54	ANGKLA	179,909	0.6452			1	
55	AKBAYAN	173,356	0.6217			1	
56	WOW PILIPINAS	172,080	0.6171			1	
TOTAL							61
TOTAL VOTES CAST FOR PARTY-LIST SYSTEM IN THE 2016 ELECTIONS		27,884,790					
ALLOCATED PARTY-LIST SEATS (APLS)		61					

Based on the foregoing table, *AKMA-PTW, SBP, ANGKLA, AKBAYAN,* and *WOW PILIPINAS,* will now be entitled to one seat each, increasing the number of participating PLOs in the HOR from fifty-one (51) to fifty-six (56). Clearly, in contrast to the formulas in *BANAT* and *Veterans,* the straightforward formula is **not only simpler (as is mandated by the law), but more importantly, allows the broadest possible representation of interests in the legislature.**

Due process issues in adopting the straightforward formula

I acknowledge that the straightforward formula may not be immediately applied in this case because of the requirements of due process. As the adoption of the straightforward formula will not only affect petitioners but also other qualified PLOs which have already been proclaimed by the COMELEC, and whose representatives have already assumed office, due process mandates that all qualified PLOs be heard on the matter. Indeed, in *Cipriano v. Commission on Elections,*[31] the Court held:

> It is therefore clear that the law mandates that the candidate must be notified of the petition against him and he should be given the opportunity to present evidence in his behalf. This is the essence of due process. **Due process demands prior notice and hearing. Then after the hearing, it is also necessary that the tribunal shows substantial evidence to support its ruling. In other words, due process requires that a party be given an opportunity to adduce his evidence to support his side of the case and that the evidence should be considered in the adjudication of the**

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[31] G.R. No. 158830, August 10, 2004, 436 SCRA 45.

case. In a petition to deny due course to or cancel a certificate of candidacy, since the proceedings are required to be summary, the parties may, after due notice, be required to submit their position papers together with affidavits, counter-affidavits, and other documentary evidence in *lieu* of oral testimony. When there is a need for clarification of certain matters, at the discretion of the Commission *en banc* or Division, the parties may be allowed to cross-examine the affiants.[32] (Emphasis supplied)

Here, if the straightforward formula is adopted, there will be party-lists, namely *Bayan Muna, Ang Probinsiyano,* 1PACMAN, MARINO, and *Probinsiyano Ako,* which will be divested of one of their seats even though they were not impleaded nor given the opportunity to be heard on the matter. It will therefore be offensive to their right to due process that one of their representatives of their current seat in the HOR be divested through this case.

Thus, should the straightforward formula be adopted, it would have to be applied by the Court and the COMELEC in succeeding elections, and not the election subject of this case. This aligns with the general rule that when the Court adopts a new view or doctrine in its interpretation of the laws, it has to be applied prospectively so as not to prejudice those who have relied on the abandoned interpretation. In other words, "when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith."[33] This is the rule because "[t]o hold otherwise would be to deprive the law of its quality of fairness and justice, for, then, there is no recognition of what had transpired prior to such adjudication."[34]

In this connection, considering that the COMELEC simply followed the *BANAT* formula in issuing NBC Resolution No. 004-19, then the Court cannot declare COMELEC to have gravely abused its discretion. The situation, should the straightforward formula be adopted, would be similar to the Court's ruling in *Atong Paglaum, Inc. v. Commission on Elections*[35] where the Court laid down a new doctrine and thus stated:

> **We cannot, however, fault the COMELEC for following prevailing jurisprudence in disqualifying petitioners. In following**

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[32] Id. at 55.

[33] *Columbia Pictures, Inc. v. Court of Appeals,* G.R. No. 110318, August 28, 1996, 261 SCRA 144, 168; see also: *Benzonan v. Court of Appeals,* G.R. Nos. 97973, 97998, January 27, 1992, 205 SCRA 515, 528, *Unciano Paramedical College, Inc. v. Court of Appeals,* G.R. No. 100335, April 7, 1993, 221 SCRA 285, 292, and *Carpio-Morales v. Court of Appeals,* G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431, 552, all citing *People v. Jabinal,* G.R. No. L-30061, February 27, 1974, 55 SCRA 607, 612.

[34] *De Jesus v. Aquino,* G.R. Nos. 164662 & 165787, February 18, 2013, 691 SCRA 71, 89.

[35] G.R. Nos. 203766, 203818-19, 203922, 203936, 203958, 203960, 203976, 203981, 204002, 204094, 204100, 204122, 204125, 204126, 204139, 204141, 204153, 204158, 204174, 204216, 204220, 204236, 204238, 204239, 204240, 204263, 204318, 204321, 204323, 204341, 204356, 204358, 204359, 204364, 204367, 204370, 204374, 204379, 204394, 204402, 204408, 204410, 204421, 204425, 204426, 204428, 204435, 204436, 204455, 204484, 204485, 204486 & 204490, April 2, 2013, 694 SCRA 477.
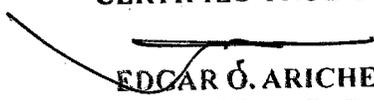
prevailing jurisprudence, the COMELEC could not have committed grave abuse of discretion. **However, for the coming 13 May 2013 party-list elections, we must now impose and mandate the party-list system actually envisioned and authorized under the 1987 Constitution and R.A. No. 7941.** In *BANAT*, this Court devised a new formula in the allocation of party-list seats, reversing the COMELEC's allocation which followed the then prevailing formula in *Ang Bagong Bayani*. In *BANAT*, however, the Court did not declare that the COMELEC committed grave abuse of discretion. **Similarly, even as we acknowledge here that the COMELEC did not commit grave abuse of discretion, we declare that it would not be in accord with the 1987 Constitution and R.A. No. 7941 to apply the criteria in *Ang Bagong Bayani* and *BANAT* in determining who are qualified to participate in the coming 13 May 2013 party-list elections.** For this purpose, we suspend our rule that a party may appeal to this Court from decisions or orders of the COMELEC only if the COMELEC committed grave abuse of discretion.[36] (Emphasis and underscoring supplied)

In light of the foregoing considerations, I concur with the *ponencia* only insofar as it dismisses the petitions, but with the caveat that the allocation of party-list seats laid down in *BANAT* should be abandoned as it fails to reflect the spirit and intent of the law. Instead, the Court should adopt a straightforward formula as discussed above, which is more in accord with the objective of the party-list system.
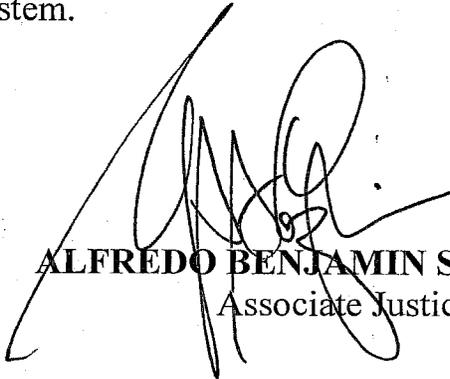
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[36] Id. at 570.