EN BANC

G.R. No. 246816 - ***ANGKLA: ANG PARTIDO NG MGA PILIPINONG MARINO, INC. (ANGKLA), and SERBISYO SA BAYAN PARTY (SBP),*** *Petitioners, v.* ***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 (PARTIDO TINIG NG MASA (AKMA-PTM), *Petitioner-in-Intervention.*

Promulgated:

September 15, 2020

x -- x

DISSENTING OPINION

GESMUNDO, *J.*:

In this amended petition for *certiorari* and prohibition, petitioners Angkla: *Ang Partido ng mga Marinong Pilipino (Angkla)* and *Serbisyo sa Bayan Party (SBP)* together with petitioner-in-intervention *Aksyon Magsasaka – Partido Tinig ng Masa (AKMA-PTM)* assail respondent Commission on Elections' (acting as the National Board of Canvassers; COMELEC, for brevity) resolution in NBOC Resolution No. 004-19, alleging that the same was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

At the center of these petitions is another attack on the validity of Republic Act *(R.A.)* No. 7941 or the *Party-list System Act*, this time on equal protection grounds. The provision in question is highlighted in Section 11 (b) of the law which provides:

> **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.

The Antecedents

After the dust had settled in the 2019 Congressional and Local Elections, the COMELEC, acting as the National Board of Canvassers, promulgated NBOC Resolution No. 004-19 declaring the winning party list groups in the May 13, 2019 ELECTIONS. Following the formula provided by *BANAT v. COMELEC (BANAT)*,[1] the resolution distributed 61 Congressional seats among the winning parties, organizations, and coalitions, thus:

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	CIBAC	929,718	3.33	2
5	Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	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	PROBIN SYANO 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 Philippines 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-NATCCO	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
22	Kalinga-Advocacy for Social Empowerment and Nation Building	KALINGA	339,665	1.22	1
23	Puwersa ng Bayaning Atleta	PBA	326,258	1.17	1
24	Alliance of Organizations, Networks, and Associations of the Philippines	ALONA	320,000	1.15	1
25	Rural Electric Consumers and Beneficiaries of Development and Advancement, Inc.	RECOBODA	318,511	1.14	1

[1] 604 Phil. 131 (2009).

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	277,940	1.00	1
29	Abang Lingkod, Inc.	ABANG LINGKOD	275,199	0.99	1
30	Advocacy for Teacher Empowerment through Action Cooperation and 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	Rebulosyonaryong 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 Asosayon Sang Mangunguma nga Bisaya-OWA 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, Inc.	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
52	Aksyon Magsasaka - Partido Tinig ng Masa (AKMA-PTM)	AKMA-PTM	191,804	0.69	0
53	Serbisyo sa Bayan Party	SBP	180,535	0.65	0
54	ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	179,909	0.65	0
55	Akbayan Citizens Action Party	AKBAYAN	173,356	0.62	0
		TOTAL	27,884,790		61[2]

Believing that they are entitled to seats, Angkla and SBP filed this instant petition for *certiorari* and prohibition calling for the adjustment in the formula of allocating additional seats following *BANAT*. They claim that *BANAT* prohibited the double counting of votes but at the same time allowed it during the distribution of the additional seats. Crying foul over potential equal protection violations, they wanted the two percent (2%) of the votes already considered allocating a guaranteed seat to organizations who were able to reach the 2% threshold to be deducted from their total votes, for purposes of equal treatment. Petitioner-in-intervention echoes this claim as it will benefit from this change as well.

[2] *Rollo*, pp. 144-150.

In the main, petitioners Angkla and SBP raises the following grounds:

I.

THE DOUBLE COUNTING OF VOTES IN THE LAST PARAGRAPH OF SECTION 11 OF THE PARTY-LIST SYSTEM ACT AND ITS IMPLEMENTATION IN NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION VIOLATES THE EQUAL PROTECTION CLAUSE AND IS A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

A. THERE IS NO SUBSTANTIAL DISTINCTION BETWEEN THE VOTES CAST FOR EACH PARTY-LIST. EVERY VOTE CARRIES EQUAL WEIGHT UNDER THE LAW.

B. THE DOUBLE COUNTING OF VOTES IS NOT GERMANE TO, AND DEFEATS THE PURPOSES OF THE LAW WHICH ARE TO PROMOTE PROPORTIONAL REPRESENTATION, ENABLE MARGINALIZED AND UNDERREPRESENTED FILIPINO CITIZENS TO CONTRIBUTE TO THE FORMULATION AND ENACTMENT OF APPROPRIATE LEGISLATION THAT WILL BENEFIT THE NATION AS A WHOLE, AND ATTAIN THE BROADEST POSSIBLE REPRESENTATION.

II.

TEN YEARS AGO, THIS HONORABLE COURT ALREADY REJECTED THE DOUBLE COUNTING OF VOTES IN ITS RESOLUTION DATED 8 JULY 2009 IN *BANAT V. COMELEC*. BY ISSUING NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION, COMELEC HAS ADAMANTLY REFUSED TO COMPLY WITH THIS HONORABLE COURT'S RESOLUTION.

III.

FURTHER, THE DOUBLE COUNTING OF VOTES, AS PROVIDED FOR IN THE LAST PARAGRAPH OF SECTION 11 AND IMPLEMENTED IN NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION, IS A GRAVE ABUSE OF DISCRETION AS IT DISENFRANCHISES PARTY-LIST VOTERS, AND DEPRIVES THEM OF MUCH NEEDED CONGRESSIONAL REPRESENTATION.

IV.

LASTLY, THE DOUBLE COUNTING OF VOTES IN THE LAST PARAGRAPH OF SECTION 11 AND ITS SUBSEQUENT IMPLEMENTATION IN NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION IS A GRAVE ABUSE OF DISCRETION AS IT VIOLATES THE PRINCIPLE THAT VOTERS ARE ONLY ENTITLED TO ONE PARTY-LIST VOTE.

V.

CONSEQUENTLY, THE WORDS "THEIR TOTAL NUMBER OF VOTES" IN THE LAST PARAGRAPH OF SECTION 11 OF THE PARTY-LIST SYSTEM ACT, AS WELL AS NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION, SHOULD BOTH BE DECLARED UNCONSTITUTIONAL, AND THE COMELEC SHOULD BE DIRECTED TO MODIFY NBOC RESOLUTION NO. 004-19 SO THAT VOTES COUNTED IN THE ALLOCATION OF GUARANTEED SEATS WILL NOT BE REUSED OR RECOUNTED IN THE ALLOCATION OF ADDITIONAL SEATS.[3]

Put simply, petitioners claim that NBOC Resolution No. 004-19 violates the equal protection clause since it gives undue preference to party-list organizations who garnered 2% or more of the total number of votes cast for the party-list system by allowing these party list organizations to be credited the same votes for the distribution of the guaranteed seats and distribution of the additional seat. Accordingly, petitioners claim that there is double counting of votes made in favor of the 2% party-list earners as opposed to party list organizations who got less than 2%, thereby violating the democratic precept of "*one person, one vote*" or the principle of political equality of votes, *i.e.,* every vote has equal weight.

Thus, petitioners pray that the Court revisits the pronouncement in *BANAT* and declares the phrase "in proportion to their total number of votes" in Section 11(b) of R.A. No. 7941 or the Party-List System Act unconstitutional and, in order to maintain the equality of votes amongst voters and thereby prevent double counting of votes, modify the distribution of the party-list seats in this wise:

> 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;

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[3] *Rollo*, pp. 118-120.

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 (1) guaranteed seat each;

3. Subtract the two percent (2%) of votes from the percentage of the total votes garnered of the party-list groups which were already allocated a guaranteed seat in the first round, then re-rank the groups accordingly;

4. Multiply the percentage of total votes garnered by each party, as adjusted, with the total number of remaining available seats;

5. The whole integer product shall be the party's share in the remaining available seats;

6. Assign one (1) party-list seat to each of the parties next in rank until all available seats are completely distributed;

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

In her Opinion, Madame Justice Amy C. Lazaro-Javier *(Justice Javier)* recommended the dismissal of the petition and sustaining the constitutionality of Section 11(b) of R. A. No. 7941 or the Party-List System Law. In sustaining the validity of the law, she cited procedural and substantive defects in the petition.

Justice Javier pointed out that some requisites for the exercise of judicial review were not present. She concludes that petitioners failed to raise the constitutionality issue at the earliest opportunity because both Angkla and SBP benefited from the operation of the *BANAT* formula in the previous party-list elections. In fact, SBP was impleaded as a party respondent in *An Warat v. COMELEC*,[5] where it vigilantly defended the application of the *BANAT* formula. The same thing happened to petitioner-in-intervention, AKMA-PTM in *AKMA-PTM v. COMELEC.*[6] She claims that if they truly believed the *BANAT* formula as unconstitutional for violating the equal protection clause, they would have raised their concern there. Instead, both Angkla and SBP kept silent and, therefore, should be considered estopped from claiming that the *BANAT* formula is defective.

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[4] Id. at 132-133.
[5] G.R. No. 224846, February 4, 2020.
[6] 760 Phil. 562 (2015).

Also, Justice Javier maintains that the constitutional challenge is not the *lis mota* of the case since the case can be resolved with the use of existing doctrines and black letter law.

On the substantive aspect, the Opinion of Justice Javier maintains that the *BANAT* formula is sound and consistent with congressional policy. Further, it maintains that there is no violation of the equal protection clause because there is substantial distinction between the two-percenters and the non-two percenters which justifies the difference in treatment between the two groups. This distinction, which is discussed in *Veterans Federation Party v. COMELEC (Veterans),*[7] was carried in the *BANAT* formula. More, Justice Javier's Opinion claims that petitioners' proposal calls for absolute proportionality which is not what is intended by the Constitution. In any event, she insists that there is no double counting of votes considering that the 2% reduction was made in the second step of the second round and not in the first step of the second round. Thus, no double counting of votes exists.

After considering the arguments of both sides, taken with the intention of the Constitutional framers and Congress, as well as the collective wisdom of the Court in previous cases, I cannot regrettably share the views of my esteemed colleague Justice Javier. To my mind, there are no procedural hindrances that would warrant the automatic sacking of this petition and there are sufficient reasons why the Court should entertain questions on the soundness of our previous decisions, particularly those that relate to difficult interpretations of the law, for to blindly adhere to *stare decisis* would violate the very oath that every judge takes.

More, as the *BANAT* formula stands, I am of the view that it violates the equal protection clause particularly the concept of "one person, one vote" which is the bedrock of our democratic and republican society as provided under Article II, Section 1 as the *BANAT* formula allows double counting of votes, *i.e.*, giving some votes more weight compared to others.

Lastly, I do agree that petitioners' proposal is more in line with the Constitutional policy agreed upon by the Constitutional framers and consistent with the intention of Congress to maintain proportionality in the allocation of additional seats.

Allow me to explain.

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[7] 396 Phil. 419 (2000).

The petition satisfies all the requisites for judicial review

The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case.[8]

Truly, while this Court's power of review may be awesome, it is limited to actual cases and controversies dealing with parties having adversely legal claims, to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented.[9]

Here, Justice Javier would have condemned the petition to the dustbin noting that petitioners failed to raise the constitutional challenge at the earliest opportunity and that petitioners are estopped in questioning the validity of the *BANAT* formula since they benefited from the said computation during the previous party-list elections.

Further, she is of the opinion that the constitutional issue is not the *lis mota* of the case considering that the issue can be resolved through existing doctrines and principles especially those espoused in *BANAT*.

I disagree.

As early as 1937, the Court in *People v. Vera*,[10] explained the requirement of "earliest opportunity", in constitutional litigation, thus –

> x x x. It is true that, as a general rule, the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the pleadings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not be considered on appeal. (12 C. J., p.

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[8] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1089-1090 (2017).
[9] Atty. *Lozano v. Speaker Nograles*, 607 Phil. 334, 340 (2009).
[10] 65 Phil. 56 (1937).

> 786. *See, also*, Cadwallader-Gibson Lumber Co. *vs.* Del Rosario, 26 Phil., 192, 193-195.) But we must state that the general rule admits of exceptions. Courts, in the exercise of sound discretion, may determine the time when a question affecting the constitutionality of a statute should be presented. (*In re* Woolsey [1884], 95 N. Y., 135, 144.) Thus, in criminal cases, although there is a very sharp conflict of authorities, it is said that the question may be raised for the first time at any stage of the proceedings, either in the trial court or on appeal. (12 C. J., p. 786.) Even in civil cases, it has been held that it is the duty of a court to pass on the constitutional question, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case. (McCabe's Adm'x. *vs.* Maysville & B. S. R. Co. [1910], 136 Ky., 674; 124 S. W., 892; Lohmeyer *vs.* St. Louis Cordage Co. [1908], 214 Mo., 685; 113 S. W., 1108; Carmody *vs.* St. Louis Transit Co. [1905], 188 Mo., 572; 87 S. W., 913.) And it has been held that a constitutional question will be considered by an appellate court at any time, where it involves the jurisdiction of the court below (State *vs.* Burke [1911], 175 Ala., 561; 57 S., 870.) x x x.[11]

Also, in *Arceta v. Judge Mangrobang*,[12] the Court held that seeking judicial review at the earliest opportunity does not mean immediately elevating the matter to this Court. Earliest opportunity means that the question of unconstitutionality of the act in question should have been immediately raised during proceedings in the court below.

It is clear from the foregoing that the rationale behind this requirement is that it prevents a party litigant from changing or altering the theory of his case and catching the other party off-guard, thereby offending all sense of fairness in court litigations. However, this is not the case here. Respondents have been apprised of petitioners' contentions and arguments and were in fact controverted by the Office of the Solicitor General head-on. There is no violation of fair play or due process of law in this scenario.

Neither should we consider this Court as the "lower court" for purposes of the procedural requirement as the rationale behind the requirement is more focused on the protection of the adverse party from surprises and underhanded tactics of the petitioners that offend fairness. Since the reason behind the requirement is not applicable in this case, it would be unfair to still mandate the rule that would serve an empty purpose - *cessante ratione legis, cessat ipsa lex*, when the reason of the law ceases, the law itself ceases.[13]

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[11] Id. at 88-89.
[12] 476 Phil. 106 (2004).
[13] *BGen. Comendador v. Gen. de Villa*, 277 Phil. 93, 116 (1991).

Even if we consider the strict application of this rule, I consider the case falling under the recognized exceptions. It has been held that in civil cases, it is the duty of the court to pass on the constitutional question, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case.[14]

Here, the argument of double counting raised by petitioners and petitioner-in-intervention was not addressed and resolved by the Court in *Veterans* and *BANAT*. Further, this case goes into the legality of the allocation of additional seats in light of the equal protection prism, particularly the issue of double counting of votes. Contrary to the position taken by Justice Javier, the Court's decision in *BANAT* is insufficient to determine the validity of the arguments based on the equal protection clause. Otherwise stated, the constitutional issue cannot be resolved on the strength of *BANAT* and previous jurisprudence as this issue is novel and is, in fact, the *lis mota* of the case.

As regards the issue on estoppel, I cannot accept petitioners being guilty of such, and are thus prevented from raising the double counting of votes issue. Estoppel, an equitable principle rooted upon natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. For a party to be bound by estoppel, the following requisites must be present: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts.[15] Obviously, the elements of estoppel are wanting simply because petitioners and petitioner-in-intervention based their conduct on the prevailing law at the time. It cannot be said that they concealed or misrepresented facts when they were merely following the prevailing law. Citizens who relied on the law cannot be expected to follow it blindly if the matter of its constitutionality escapes their immediate attention. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same.[16]

Further, it should never escape our attention that the interpretation of the party-list law by the organizations themselves who are allowed to participate in the proper allocation of seats, have been subject to numerous litigations that produced different results from *Ang Bagong Bayani-OFW*

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[14] *San Miguel Brewery, Inc., v. Magno*, 128 Phil. 328, 334 (1967).
[15] *Philippine National Bank v. Palma,* 503 Phil. 917, 934 (2005).
[16] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 465 Phil. 860, 893 (2004).

Labor Party v. COMELEC[17] to *Atong Paglaum Inc. v. COMELEC*[18] and *Veterans* to *BANAT*. It can even be conceded that the party-list law has become a difficult point of law considering the changes in interpretation of its provisions. From the foregoing, it is my view that a party cannot be estopped from raising issues that relate to difficult questions of law. Otherwise, the development of jurisprudence would be halted indiscriminately simply because an earlier court interpretation has already been made regardless of its soundness and reasonability.

Lastly, reliance on the strength of *stare decisis* established by *BANAT* can be made as long as is passes constitutional muster. In the past, the Court has never been shy in disregarding *stare decisis* especially when the previous ruling no longer appears to be reasonable or proper.

In *De Castro v. Judicial and Bar Council*,[19] the Court, in ruling that the appointment of the Chief Justice is outside the midnight appointment prohibition under Article VII, Section 15 of the Constitution, refused to, and in fact abandoned, the Court's earlier ruling in *In Re Appointments of Hon. Valenzuela and Hon. Vallarta*.[20] In doing so, the Court stated –

> In this connection, PHILCONSA's urging of a revisit and a review of *Valenzuela* is timely and appropriate. *Valenzuela* arbitrarily ignored the express intent of the Constitutional Commission to have Section 4 (1), Article VIII stand *independently of* any other provision, least of all one found in Article VII. It further ignored that the two provisions had no irreconcilable conflict, regardless of Section 15, Article VII being couched in the negative. As judges, we are not to unduly interpret, and should not accept an interpretation that defeats the intent of the framers.
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> Consequently, prohibiting the incumbent President from appointing a Chief Justice on the premise that Section 15, Article VII extends to appointments in the Judiciary cannot be sustained. *A* **misinterpretation like *Valenzuela* should not be allowed to last after its false premises have been exposed. It will not do to merely distinguish *Valenzuela* from these cases, for the result to be reached herein is entirely incompatible with what *Valenzuela* decreed. Consequently, *Valenzuela* now deserves to be quickly sent to the dustbin of the unworthy and forgettable.**
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> We reverse *Valenzuela*.[21] (citations omitted, emphasis supplied)

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[17] 412 Phil. 308 (2001).
[18] 707 Phil. 454 (2013).
[19] 629 Phil. 629 (2010).
[20] 358 Phil. 896 (1998).
[21] Supra note 19 at 693-694.

Again, and quite recently, in *Cagang v. Sandiganbayan*,[22] the Court expressly abandoned *People v. Sandiganbayan, First Division*,[23] and excluded the period of time dedicated for fact-finding for purposes of determining whether or not there is a violation of the right to speedy disposition of cases under Section 16, Article III of the Constitution. In deciding to abandon precedent, the Court ruled –

> When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.
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> This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.
>
> Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. ***In People v. Sandiganbayan, Fifth Division, the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned***. (citation omitted, emphasis supplied)

Truly, the evolution of judicial philosophy and the entry of new justices of the Court bring new perspectives and paradigms that question issues thought to be long-settled. For sure, *stare decisis* cannot shackle the solemn duty of jurists to interpret the law on the basis of their own lenses.

While *stare decisis* remains to be the rule in this jurisdiction, there are reasons, as will be discussed below, to forego the application principle especially and re-examine *BANAT* in light of the issue of double counting of votes.

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[22] G.R. No. 206438, July 31, 2018, 875 SCRA 374, 435-436.
[23] 723 Phil. 444 (2013).

The distribution of additional seats in proportion to the total number of votes under the BANAT formula offends the equal protection clause particularly the concept of "one person, one vote"

A. Equal Protection Clause

Article III, Section 1 of the 1987 Constitution mandates that all persons shall not be denied the equal protection of the laws. The equal protection clause requires that all persons be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities.[24]

In *Biraogo v. The Philippine Truth Commission of 2010*,[25] the Court expounded the concept of equal protection in this regard:

> "According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed." It "requires public bodies and institutions to treat similarly situated individuals in a similar manner." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the state's duly constituted authorities." "In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective."
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> The equal protection clause is aimed at all official state actions, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken.
>
> It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test

[24] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018.
[25] 651 Phil. 374, 458-461 (2010).

of ***reasonableness.*** The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. "Superficial differences do not make for a valid classification."

For a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class. "The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed. It is not necessary that the classification be made with absolute symmetry, in the sense that the members of the class should possess the same characteristics in equal degree. Substantial similarity will suffice; and as long as this is achieved, all those covered by the classification are to be treated equally. The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the non-application of the law to him."

The classification must not be based on existing circumstances only, or so constituted as to preclude addition to the number included in the class. It must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. It must not leave out or "underinclude" those that should otherwise fall into a certain classification. As elucidated in *Victoriano v. Elizalde Rope Workers' Union* and reiterated in a long line of cases, [t]he guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

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. (citations omitted)

B. "One Person, One Vote" Concept

Article II, Sec. 1 provides that the Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them. For the Constitutional framers, the concept of republicanism was added to purposely declare that the country adopts a representative democratic system[26] where leaders are chosen by the people to govern and lead them.

As a tool to determine the representatives of the people, elections are held and during such event, the people exercise their sovereign power to choose their leaders. In this regard, the equal protection clause ensures that a person is entitled to one vote and such vote carries the same weight as others. There are no privileged individuals whose vote is weightier than others simply because of gender, race or station in life.

Retired Senior Associate Justice Antonio T. Carpio succinctly discussed this equality of weight of votes or the "one person, one vote" concept in his Dissenting Opinion in *Sen. Aquino III v. COMELEC*,[27] 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*.** x x x.[28]

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[26] *Records of the Constitutional Commission No. 086*, September 18, 1986.
[27] 631 Phil. 595 (2010).
[28] Id. at 637-638.

From the foregoing, two (2) things are clear. First, the concept of "one person, one vote" is inherent in our system and need not be expressly stated because it is a necessary consequence of the republican and democratic nature of the Philippines state. Second, the concept of "one person, one vote" is protected under the mantle of equal protection since the weight of the vote of a person is the same as others and there is no substantial distinction per voter whether on the basis of race, gender, age, lineage, social standing or education.

Considering the concepts discussed above, I am convinced that the *BANAT* formula for distributing additional seats violates this principle.

As correctly pointed out by the petitioners, the 2% votes to justify the allocation of one (1) guaranteed seat were already 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 votes 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 votes from those who did not.

Justice Javier seems to justify the grant of "double counting of votes" by alleging that there is substantial distinction between party-list organizations who received 2% or more of the total votes cast and those party-lists who did not meet the threshold. Thus, justifying the difference in treatment, *i.e.* allowing the votes already counted for the guaranteed seat to once again be considered for the allocation of additional seat.

Again, I cannot subscribe to this argument.

First, a reading of *Veterans*, would show that *Veterans* never discussed the validity of the 2% threshold on equal protection grounds. *Veterans* upheld the 2% threshold on the basis of the intent of the Constitutional framers and the intent of Congress to ensure proper representation; and for Congress, 2% of the total votes cast would already ensure a mandate. Even if there is an equal protection component in *Veterans*, its justification is limited only in the first round. The same treatment cannot be extended to the allocation of the additional seat. This is simply not part of *Veterans* and would be an unacceptable stretch of the Court's argument.

Second, there seems to be a contradiction in the stance of Justice Javier when, in one breath, she claims that the double counting of votes is acceptable, since there is substantial distinction between groups obtaining the needed 2% threshold and those who do not,[29] and at the same time declares that there is no double counting of votes since the deduction of 2% as *BANAT* instructs "is done in the second step of the second round of the seat allocation not in the first step of the second round."[30] The stance is self-defeating.

Third, the argument that the deduction of the 2% was made is not an accurate claim. While there is indeed a reduction of the percentages garnered by party-list organizations in the distribution of the additional seats following *BANAT*, the reduction does not amount to the 2% of the total votes cast. This is because in the round that allocates the guaranteed seat, its proportionality is based on the total number of votes cast for the party-list election while in the round for the allocation of additional seats, the proportionality is not dependent on the numbers of votes cast alone but also on the total number of reserved remaining party-list seats in Congress. Thus, the reason for the reduction is not the deduction of the 2% allocated for the guaranteed seats but because of the change in the basis of the proportionality which is now the total number of votes cast **AND** the total number of seats remaining for party-list organizations after deducting the number of guaranteed seats already allocated. This is why the reduction from the percentage in the guaranteed seats to the percentage in the additional seat can never be 2%. Hence, to claim that there is no double counting of votes because the 2% considered was already deducted is without basis.

Lastly, even if there is an exact 2% reduction given to the party-list organizations who garnered the 2% threshold, the *BANAT* formula would still be flawed considering that the reduction in the allocation of the additional seats apply not only to party-list organizations who obtained the 2% threshold **but to all parties** since all parties will be subjected to the same formula. Thus, any deduction brought about by the formula to the group who obtained the 2% threshold, that same deduction will be applied to the others. Conversely stated, if there are no double counting of votes because the 2% was deducted only from those party-list organizations who already qualified to get a guaranteed seat, then why the reduction on the percentages of votes of party-list organizations who failed to meet the 2% requirement in the allocation of additional seat? Thus, it cannot be said that there is no inequality of votes here.

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[29] *See* draft *ponencia* as of June 2, 2020, p. 22: "*In the exercise of this prerogative, Congress modified the weight of votes cast under the party list system with reason.*"
[30] *See* Opinion of Justice Javier, as of June 2, 2020, p. 21.

Clearly, this double counting of votes creates a classification that does not justify the requirements of a valid classification; particularly, the classification not being germane to the purposes of the law. There is no justification why there is a need to re-credit votes already credited. Further, there can be no conceivable explanation why the vote of one person should have more value compared to others. A contrary rule would be obnoxious to the democratic and republican nature of the country and the promise of equal protection under the Bill of Rights.

As such, since there is double counting of votes and the same violates the equal protection clause, particularly the "one person, one vote" mantra of democratic and republican states, the formula as to the allocation of additional seats must be fine-tuned to address this conundrum.

C. Relative Constitutionality

Aside from what was discussed above, the concept of relative constitutionality comes to play in this case which would further show the violation of the equal protection clause.

In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[31] the Court explained the concept of relative constitutionality in this regard, thus:

> The constitutionality of a statute cannot, in every instance, be determined by a mere comparison of its provisions with applicable provisions of the Constitution, since the statute may be constitutionally valid as applied to one set of facts and invalid in its application to another.
>
> A statute valid at one time may become void at another time because of ***altered circumstances***. Thus, if a statute in its practical operation becomes arbitrary or confiscatory, its validity, even though affirmed by a former adjudication, is open to inquiry and investigation in the light of ***changed conditions***.[32] (citations omitted)

Here, because of the change brought about by *BANAT* to the allocation of additional seats, the double counting of votes, which was absent in the previous computation under *Veterans* is now allowed.

It must be remembered that the allocation of party-list seats was first settled by the Court in *Veteran*s. Simply, party-list groups who got 2% of the votes will get one (1) seat and will get an additional seat for every

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[31] 487 Phil. 531 (2004).
[32] Id. at 562-563.

additional 2% it gets not exceeding three (3) seats. As stated above, the Court sustained the validity of the 2% threshold on the grounds that the percentage ensures a proper mandate from the people it seeks to represent. Now, Congress created two kinds of groupings: those who obtain the 2% and thus get a guaranteed seat, and those who fail to obtain the 2% threshold and fail to get a guaranteed seat. To me, this is a valid classification for purposes of validating the grant of the guaranteed seat. The equal protection challenge, however, would end there, since any additional seat would depend on an additional 2% of the votes aside from the earlier 2% credited for the guaranteed seat.

With the advent of *BANAT*, however, the allocation of additional seats was changed and it allowed the distribution of additional seats in relation to the total number of votes received, including those already credited for the guaranteed seat. While the privilege of the organizations which garnered at least 2% of the votes remained as regards the grant of guaranteed seats as there was substantial distinction between them, the same cannot be said for the distribution of additional seats, *BANAT* allowed the double counting of votes because the same votes used to clinch the guaranteed seats were used to qualify for an additional seat. This violates the equal protection clause because of the inequality of the weight of votes per voter.

Hence, while the advantage given to a party-list organization which obtains at least 2% of the total votes cast remained for purposes of the guaranteed seat, the change in the manner of computation for additional seats results in the obnoxious unequal treatment of votes in favor of groups who failed to secure the 2% threshold that should not endure in our legal system.

Thereby, the phrase "in proportion to their total number of votes" in Section 11(b) of R.A. No. 7941 should be struck down for it results to the double counting of votes which is repugnant to the equal protection clause; particularly, the concept of "one person, one vote."

What therefore remains would be the mechanism furnished by the petitioners and an examination of the requirements of the Constitution and of R.A. No. 7941. I conclude that the resulting mechanism is consistent with law and the intention of the framers.

The Constitutional Intentions conform with the petitioners' formula for the distribution of additional seats for the party-list system

With the declaration of invalidity of the phrase "in proportion to their total number of votes" in Section 11(b) of R.A. 7941, it becomes apparent that a modified manner of computation for allocation of additional seat is in order. As will be discussed below, I am of the opinion that petitioners' formula best reflects the intention of the Constitutional Commission and meets the demands of Congress.

A. Constitutional Guidelines

Article VI, Section 5(2) provides:

> Section 5. x x x
>
> (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. (emphasis supplied)

Justice Javier was correct in stating that the Constitutional Commission left it to the discretion of Congress on how to formulate and implement the party-list system. This, however, does not mean that the framers completely abrogated its authority to provide guidance to Congress on how it should be done, at least on broad strokes. This was the sentiment of the Constitutional framers, thus –

> MR. OPLE: Madam President, there is nothing to prevent this Commission from **sending constitutional guidelines to Congress** in the form of this proposal so that it says, "as may be provided by law." It is completely consistent and synchronous with the earlier provision on sectoral representation in the Article on the Legislative. At any rate, I believe that this has been approved by the committee. It has been exhaustively debated on and I see no reason why the Chair should not put this to a vote now.[33] (emphasis supplied)

[33] *Records of the Constitutional Commission, No. 096,* September 30, 1986.

In support of the presence of these guidelines prescribed by the Constitutional framers, the records of the deliberations of the 1986 Constitutional Commission are replete with discussions and debate on the party-list system and the principles that underlie the system to be proposed. If the commissioners intended to completely pass the duty to Congress, it should have stopped the debates and discussions or limited the same. But this is not the case. The framers of the Constitution discussed and agreed on at least 2 basic guidelines for Congress to follow in crafting the party-list system.

First, the framers intended the party-list system to open up the political system to different groups who have been forgotten for decades, thus, in a debate that supports the proposition against reserved seats for some sectors, Commissioner Christian Monsod explains:

> MR. TADEO: *Ang* mechanics *po ay isinumite namin kay* Commissioner Villacorta. *Nandoon na po kung ano ang mga dapat na gawin.*
>
> MR. MONSOD: Madam President, I just want to say that we suggested or proposed the party list system because ***we wanted to open up the political system to a pluralistic society through a multiparty system. But we also wanted to avoid the problems of mechanics and operation in the implementation of a concept that has very serious shortcomings of classification and of double or triple votes.*** We are for opening up the system, and we would like very much for the sectors to be there. ***That is why one of the ways to do that is to put a ceiling on the number of representatives from any single party that can sit within the 50 allocated under the party list system. This way, we will open it up and enable sectoral groups, or maybe regional groups, to earn their seats among the fifty***. When we talk about limiting it, if there are two parties, then we are opening it up to the extent of 30 seats. 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 [2%], 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.[34] (emphases supplied)

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[34] *Records of the Constitutional Commission No. 039,* July 25, 1986.

The discourse between Commissioner Blas Ople and Commissioner Christian Monsod, also reveals the same intention, thus –

> 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 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.
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> ***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.
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> 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.[35] (emphases supplied)

Thus, from what can be discerned from the deliberations quoted above, the framers intended that the party-list system serve as a tool to accommodate weaker parties and make them part of the legislative system. This is the reason why there is a three (3)-seat cap limit per party in the party- list system. This is an acknowledgement that in the same marginalized sectors of society, there are minorities that are more disenfranchised or marginalized. These parties, per the intentions of the framers, must be protected and accommodated.

Secondly, as reflected by the records of the deliberations of the Constitutional framers, the party-list system should avoid problematic mechanisms that would lead to undesirable results, like multiple voting[36] and unequal weight of votes. Commissioner Monsod, the proponent of the party-list proposal, objected to the proposal of reserved party-list seats, since it would provide some voters 2 votes while the others only one. Thus –

> 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 become 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

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[35] Id.

[36] See *Records of the Constitutional Commission No. 039,* supra note 34.

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.

ADM

> 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.[37] (emphases supplied)

From the foregoing, it is clear that the system should avoid the problems that the framers foresaw, including the problem of unequal treatment of votes. Clearly, the framers intended to prohibit double counting or even triple counting, of votes as they cited it as a problem Congress should be wary about and should prevent.

B. Statutory Enactment and the *BANAT* Decision

When Congress enacted R.A. No. 7941, it was guided by the parameters set forth by the framers of the Constitution. Section 2 of the law clearly mirrors the first guideline of the framers:

> **Section 2.** *Declaration of policy.* The State shall promote ***proportional representation in the election of representatives*** to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, ***the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature***, and shall provide the simplest scheme possible. (emphases supplied)

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[37] *Records of the Constitutional Commission No. 036,* July 22, 1986.

Also, to ensure that a more diverse group of organizations would qualify and more interests are articulated, the 3-cap rule was established to control the well-off party-list groups as opposed to those less known, less organized party-list organizations.

Lastly, Congress also mandated that the system of seat-allocation be proportional.

Insofar as the second guideline is concerned, Congress thought it best to pattern the party-list system similar to the electoral system in Germany in order to assure the equal distribution of seats through proportionality and defeat the evils of unequal treatment of votes that concerned the framers.[38]

When the *BANAT* Decision was promulgated, however, it resulted into an evil that the Constitutional Commission itself sought to avoid: the double counting of votes where the votes used to clinch the guaranteed seats were also used to allocate the additional seat. The adoption of petitioners' method actually adheres to the guidelines of the Constitutional Commission as it prevents the evil that *BANAT* allows. The only question that remains is whether or not the petitioners' method complies with the Congressional requirement of proportionality.

I believe it does.

When we look at existing proportional systems that use a quota threshold, proportionality requires the subtraction of credited votes already used just like what the petitioners propose.

C. Electoral Systems

To be clear, R.A. No. 7941 is not an election law; rather it creates what is referred to as an electoral system. The two concepts refer to two (2) different things. David Farrell, in his book, *Comparing Electoral Systems*[39] explains –

> ***x x x. Electoral laws are the family of rules governing the process of elections: from the calling of the election, through the stages of candidate nomination, party campaigning and voting, and right up to the stage of counting votes and determining the actual election result.*** There can be any number of rules governing how to run an election. For instance, there are laws on who can vote (citizens, residents, people over

[38] See *Veterans Federation Party v. COMELEC*, 396 Phil. 419, 440 (2000).
[39] Farrell, David M. *Comparing Electoral Systems*, MacMillan Press, Ltd., London, 1997, pp. 3-5.

> seventeen years of age, the financially solvent, etc.); there can even be laws, such as in Australia or Belgium, obliging citizens to tum out to vote. Then there are usually a set of rules setting down the procedures for candidate nomination (e.g. a minimum number of signatures, a deposit). The campaign process can also be subject to a number of rules: whether polling, television advertising or the use of campaign cars is permitted; the size of billboards; the location of posters; balance in broadcasting coverage, and so on.
>
> Among this panoply of electoral laws there is one set of rules which deal with the process of election itself: how citizens vote, the style of the ballot paper, the method of counting, and the final determination of who is elected. It is this aspect of electoral laws with which this book is concerned. This is the electoral system, the mechanism of determining victors and losers, which clicks into action once the campaign has ended. This is the stage where the political pundits take over from the politicians; where the television companies dust off their 'pendulums' and 'swingometers' and wheel out their latest computer graphic wizardry. Campaign slogans and electoral recriminations have ended. All attention is focused on thousands of people shuffling ballot papers in 'counting centres' throughout the country. (At least, this is the situation in Britain. In other countries, the counting and even the voting are done by computer.) Politicians, journalists and (some) voters wait with baited breath for the returning officer to announce 'the result'. TV presenters work long into the night, probing with their panelists the meaning of the results and assessing the voters' 'verdict'.
>
> This scenario of 'election night coverage' is common to most political systems. There may be some variation in detail, but the basic theme is similar: we the voters have voted, and now we are waiting to see the result of our votes, in terms of who wins or loses and in terms of the number of seats won by each of the parties. It is the function of the electoral system to work this transformation of votes into seats. To put this in the form of a definition: ***electoral systems determine the means by which votes are translated into seats in the process of electing politicians into office***.
>
> Exactly how this translation occurs varies from one system to the next. In some systems great effort is made to ensure that the number of seats each party wins reflects as closely as possible the number of votes it has received. In other systems greater importance is attached to ensuring that one party has a clear majority of seats over its competitors, thereby (hopefully) increasing the prospect of strong and stable government. The first of these systems is said to be 'proportional', in contrast to the others which are 'non-proportional' electoral systems.

While the Bundestag of Germany uses the Niemeyer Formula, Germany actually patterns its electoral system after a generic system, referred to as the German two (2)-vote system. This basic system has

adopted with modification by different countries including Hungary, Italy, Japan, New Zealand and Russia.[40]

The basic form of this German 2-vote system is discussed by Farrell in this regard –

> The German voter has two votes for the two types of MP. In the most recent 1994 election, for instance, the Bundestag had 656 MPs: 328 (50 per cent) of these were elected to represent individual constituencies, and 328 (50 per cent) were elected from the regional lists (allocated at the *Land* level). It is important to note that the allocation of the list seats is computed on the basis of the full Bundestag membership, i.e. as if the PR list election were the whole election. In the polling station, each voter receives a ballot paper much like the one shown in Figure 5.1, and is asked to tick two boxes: first, on the left hand side of the ballot paper for a constituency candidate, and second, on the right hand side for a regional list. The first vote is for a candidate, while the second vote is for a party.
>
> x x x x
>
> The election count proceeds in three stages. First, there are counts in each constituency to determine which candidate is elected and to work out the total number of constituency seats for each of the parties in each of the federal *Lander*. Just like in British elections, the candidates with most votes in each constituency are elected, regardless of whether or not they have an overall majority of the votes in the constituency. x x x
>
> The crucial factor which separates the two-vote system from FPTP is the second vote where smaller parties have a much greater chance of winning seats. x x x
>
> The first two stages in the counting process (i.e. the counting of first and second votes) are common to all existing two-vote systems. It is in the third and final stage that a very important distinction arises. The nature of this distinction is elaborated in section 5.3 below, for now we will examine how it works in the German case. The basic point of the German system is that it should produce a proportional result. ***In order to achieve this, it is important that the larger parties should not be overly advantaged by the greater ease with which they win constituency seats. Therefore the operating principle of this third stage in the German count is that the total number of constituency seats won by the parties should be subtracted from the total number of lists seats they have been allocated (and remember that the list seats are allocated at the Land level). It is for this reason that the two-vote system is generally referred to as the 'additional member' system, because the result of this subtraction determines the number of additional members to which each party is entitled.***[41] (emphasis supplied)

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[40] Id. at 86-87.
[41] Id. at 89-93.

It does not come as a surprise that our party-list system resembles the basic principles of the German 2-vote system considering that Congress adopted, not the Niemeyer Formula, but the basic principles of the German 2-vote system in this jurisdiction. It is also worth noting that the first step of this electoral system is the election of two (2) representatives, one by district or land, and one by list or party-list organizations. It is also similar in the second step which requires a minimum threshold to garner seats. The third step is also similar as we deduct the obtained seat (guaranteed seat) from the total allowable seat (which is three).

Insofar as the allocation of additional seats, Congress mandates a proportionate distribution. To determine whether the petitioners' proposal meets the required proportionality of the law, we look at different models of proportional representation, generically referred to as the PR List system. PR list systems that closely resemble our system follow the largest remainder system. The central feature of this system (referred to in the USA as the Hamilton method) is an electoral quota. The counting process occurs in two rounds. In the first round, parties with votes exceeding the quota are awarded seats, and the quota is subtracted from their total vote. In the second round, those parties left with the greatest number of votes (the 'largest remainder') are awarded the remaining seats in order of vote size.[42] This is the same system advocated by the petitioners.

In adopting this system, proportionality is achieved while at the same time avoiding the 'double counting' dilemma brought about by the *BANAT* Decision. Thus, we characterize the Philippine party-list system as a hybrid of the German 2-vote system and the PR list system that follows the largest remainder system. Of course, our system becomes distinct from other systems because: (1) we limit the number of party-list representatives to 20% of the House of Representatives; and (2) we impose the 3-seat cap. These characteristics make the party-list system of the Philippines unique.

D. Petitioners' proposal compared to the *BANAT* formula

Petitioners' model which would be the necessary result of the Court's declaration of invalidity of the phrase "in proportion to their total number of votes" is consistent with Constitutional and Statutory directives.

First, it opens up Congress to more groups, thereby ensuring that more interests are properly represented. This includes even those interests that the marginalized sector itself failed to recognize and represent.

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[42] Id. at 62.

Second, it prevents the evil of unequal weight of votes that the *BANAT Decision* perpetuates; and

Lastly, the proposal is still proportionate considering other similar systems around the world.

A comparative table would show how the *BANAT* formula differs from the petitioners' formula and the constitutional violation that the *BANAT* formula presents. As settled, the *BANAT* Decision provides:

> In determining the allocation of seats for party-list representatives under Section 11 of R.A. No. 7941, the following procedure shall be observed:
>
> 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.

As applied in this case, steps 1 and 2 would reveal eight (8) party-list organizations obtained one guaranteed seat each for clinching at least 2% of the votes cast or at least 557,695 votes, thus:

Rank	Party-List	Acronym	Votes Garnered	% of Total Votes	1st seat
1	Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	2,651,987	9.51	1
2	Bayan Muna	BAYAN MUNA	1,117,403	4.01	1
3	Ako Bicol Political Party	AKO BICOL	1,049,040	3.76	1
4	Citizens Battle Against Corruption	CIBAC	929,718	3.33	1
5	Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	770,344	2.76	1
6	One Patriotic Coalition of Marginalized Nationals	1 PACMAN	713,969	2.56	1
7	Marino Samahan ng mga Seaman, Inc.	MARINO	681,448	2.44	1
8	Probinsyano Ako	PROBINSYANO AKO	630,435	2.26	1

9	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	1.85	0

From the table above, it is clear that these 8 party-list organizations were able to qualify for a seat in Congress by obtaining more than 557,695 votes or at least 2% of the votes cast for the party-list elections. Applying steps 3 and 4 of *BANAT,* however, would show that the same 557,695 votes are again used to qualify the 8 party-list organizations who obtain additional seats, thus –

Rank	Party-List	Acronym	Votes Garnered	% vis-a-viz remaining seats	Add'l Seats
1	Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	**2,651,987**	5.04	2
2	Bayan Muna	BAYAN MUNA	**1,117,403**	2.12	2
3	Ako Bicol Political Party	AKO BICOL	**1,049,040**	1.99	1
4	Citizens Battle Against Corruption	CIBAC	**929,718**	1.76	1
5	Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	**770,344**	1.46	1
6	One Patriotic Coalition of Marginalized Nationals	1 PACMAN	**713; 969**	1.35	1
7	Marino Samahan ng mga Seaman, Inc.	MARINO	**681,448**	1.29	1
8	Probinsyano Ako	PROBINSYANO AKO	**630,435**	1.19	1
9	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	0.98	1
10	Magkakasama sa Sakahan, Kaunlaran	MAGSASAKA	496,337	0.94	1
11	Association of Philippine Electric Cooperatives	APEC	480,874	0.91	1
12	Gabriela Women's Party	GABRIELA	449,440	0.85	1
13	An Waray	AN WARAY	442,090	0.84	1
14	Cooperative NATCCO Network	COOP-NATCCO	417,285	0.79	1
15	Act Teachers	ACT TEACHERS	395,327	0.75	1
16	Philippine Rural Electric Cooperatives Association, Inc.	PHILRECA	394,966	0.75	1
17	Ako Bisaya, Inc.	AKO BISAYA	394,304	0.74	1
18	Tingog Sinirangan	TINGOG SINIRANGAN	391,211	0.74	1
19	Abono	ABONO	378,204	0.71	1
20	Buhay Hayaan Yumabong	BUHAY	361,493	0.68	1
21	Duty to Energize the Republic Through the Enlightenment of the Youth	DUTERTE YOUTH	354,629	0.67	1
22	Kalinga-Advocacy for Social Empowerment and Nation Building	KALINGA	339,665	0.64	1
23	Puwersa ng Bayaning Atleta	PBA	326,258	0.62	1
24	Alliance of Organizations, Networks, and Associations of the Philippines	ALONA	320,000	0.60	1
25	Rural Electric Consumers and Beneficiaries of Development and Advancement, Inc.	RECOBODA	318,511	0.60	1
26	Bagong Henerasyon	BH (BAGONG HENERASYON)	288,752	0.54	1

27	Bahay para sa Pamilyang Pilipino, Inc.	BAHAY	281,793	0.53	1
28	Construction Workers Solidarity	CWS	277, 940	0.52	1
29	Abang Lingkod, Inc.	ABANG LINGKOD	275,199	0.52	1
30	Advocacy for Teacher Empowerment through Action Cooperation and Harmony Towards Educational Reform	A TEACHER	274,460	0.52	1
31	Barangay Health Wellness	BHW	269,518	0.51	1
32	Social Amelioration and Genuine Intervention on Poverty	SAGIP	257,313	0.48	1
33	Trade Union Congress Party	TUCP	256,059	0.48	1
34	Magdalo Para Sa Pilipino	MAGDALO	253,536	0.48	1
35	Galing sa Puso Party	GP	249,484	0.47	1
36	Manila Teachers Savings and Loan Association, Inc.	MANILA TEACHERS'	249,416	0.47	1
37	Rebulosyonaryong Alyansa Makabansa	RAM	238,150	0.45	1
38	Alagaan Natin Ating Kalusugan	ANAKALUSUGAN	237,629	0.45	1
39	Ako Padayon Pilipino	AKO PADAYON	235,112	0.44	1
40	Ang Asosayon Sang Mangunguma nga Bisaya-OWA Mangunguma, Inc.	AAMBIS-OWA	234,552	0.44	1
41	Kusug Tausug	KUSUG TAUSUG	228,224	0.43	1
42	Dumper Philippines Taxi Drivers Association, Inc.	DUMPER PTDA	223,199	0.42	1
43	Talino at Galing Pilipino	TGP	217,525	0.41	1
44	Public Safety Alliance for Transformation and Rule of Law, Inc.	PATROL	216,653	0.41	1
45	Anak Mindanao	AMIN	212,323	0.40	1
46	Agricultural Sector Alliance of the Philippines	AGAP	208,752	0.39	1
47	LPG Marketers Association, Inc.	LPGMA	208,219	0.39	1
48	OFW Family Club, Inc.	OFW Family	200,881	0.38	1
49	Kabalikat ng Mamamayan	KABAYAN	198,571	0.37	1
50	Democratic Independent Workers Association	DIWA	196,385	0.37	1
51	Kabataan Party List	KABATAAN	195,837	0.37	1
52	Aksyon Magsasaka - Partido Tinig ng Masa (AKMA-PTM)	AKMA-PTM	191,804	0.36	0
53	Serbisyo sa Bayan Party	SBP	180,535	0.34	0
54	ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	179,909	0.34	0
55	Akbayan Citizens Action Party	AKBAYAN	173,356	0.32	0
xx	xxx	xxx	xxx	xxx	xxx
		TOTAL	27,884,790		53

This is a clear instance of double counting of votes where votes already used to elect a representative *via* the guaranteed seat are once again, and without justifiable reason, used to elect a representative for the additional seat. A total of 557,695 votes were unjustifiably and indiscriminately credited twice to the detriment of other votes cast in favor of other party-list organizations. This violates not only the equal protection clause, but also the principle of "one person, one vote" which is a bedrock of the republican and democratic nature of the Philippine State.

In order to remove such an objectionable scenario created by the *BANAT* ruling, petitioner's formula is warranted as it is consistent with the guidelines provided by the framers of the Constitution and Congress. The petitioners' formula provides:

> 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. Subtract the two percent 2% of the votes from the percentage of the total votes garnered of the party list groups which were already allocated a guaranteed in the first round, then re-rank the groups accordingly;
>
> 4. Multiply the percentage of total votes garnered of each party, as adjusted, with the total number of remaining available seats;
>
> 5. The whole integer product shall be the party's share in the remaining available seats;
>
> 6. Assign on party-list seat to each of the parties next in rank until all available seats are completely distributed;
>
> 7. Each party, organization, or coalition shall be entitled to not more than three (3) seats.[43]

Steps 1 and 2 of petitioners' formula are the same as *BANAT*. It is petitioners' step 3 where the divergence starts. Instead of proceeding to the distribution of the additional seats, step 3 requires the removal of the 2% of the votes already considered to award the guaranteed seats from the 8 party-list organizations. The remaining difference will be re-ranked accordingly. This step removes the objectionable part of *BANAT* that allows double crediting of votes. Thus –

Rank	Party-List	Acronym	Votes Garnered	% of Total Votes	1st seat
1	Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	2,651,987	9.51	1
2	Bayan Muna	BAYAN MUNA	1,117,403	4.01	1
3	Ako Bicol Political Party	AKO BICOL	1,049,040	3.76	1
4	Citizens Battle Against Corruption	CIBAC	929,718	3.33	1
5	Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	770,344	2.76	1

[43] Petition, p. 27.

6	One Patriotic Coalition of Marginalized Nationals	1 PACMAN	713,969	2.56	1
7	Marino Samahan ng mga Seaman, Inc.	MARINO	681,448	2.44	1
8	Probinsyano Ako	PROBINSYANO AKO	630,435	2.26	1
9	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	1.85	0

X X X X

Party-List	Acronym	Votes Garnered	The Difference
Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	2,651,987	2,094,292
Bayan Muna	BAYAN MUNA	1,117,403	559,708
Ako Bicol Political Party	AKO BICOL	1,049,040	491,345
Citizens Battle Against Corruption	CIBAC	929,718	372,023
Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	770,344	212,649
One Patriotic Coalition of Marginalized Nationals	1 PACMAN	713,969	156,274
Marino Samahan ng mga Seaman, Inc.	MARINO	681,448	123,753
Probinsyano Ako	PROBINSYANO AKO	630,435	72,740

The re-ranked table applying steps 4, 5 and 6 would show:

Rank	Party-List	Acronym	Votes Garnered	% of Total Votes	Seats
1	**Anti-Crime and Terrorism Community Involvement and Support, Inc.**	**ACT CIS**	**2,094,292**	**3.98**	**2**
2	**Bayan Muna**	**BAYAN MUNA**	**559,708**	**1.06**	**1**
3	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	0.98	1
4	Magkakasama sa Sakahan, Kaunlaran	MAGSASAKA	496,337	0.94	1
5	**Ako Bicol Political Party**	**AKO BICOL**	**491,345**	**0.93**	**1**
6	Association of Philippine Electric Cooperatives	APEC	480,874	0.91	1
7	Gabriela Women's Party	GABRIELA	449,440	0.85	1
8	An Waray	AN WARAY	442,090	0.84	1
9	Cooperative NATCCO Network	COOP-NATCCO	417,285	0.79	1
10	Act Teachers	ACT TEACHERS	395,327	0.75	1
11	Philippine Rural Electric Cooperatives Association, Inc.	PHILRECA	394,966	0.75	1
12	Ako Bisaya, Inc.	AKO BISAYA	394,304	0.74	1
13	Tingog Sinirangan	TINGOG SINIRANGAN	391,211	0.74	1
14	Abono	ABONO	378,204	0.71	1
15	**Citizens Battle Against Corruption**	**CIBAC**	**372,023**	**0.70**	**1**
16	Buhay Hayaan Yumabong	BUHAY	361,493	0.68	1
17	Duty to Energize the Republic Through the Enlightenment of the Youth	DUTERTE YOUTH	354,629	0.67	1
18	Kalinga-Advocacy for Social Empowerment and Nation Building	KALINGA	339,665	0.64	1
19	Puwersa ng Bayaning Atleta	PBA	326,258	0.62	1
20	Alliance of Organizations, Networks, and Associations of the Philippines	ALONA	320,000	0.60	1

21	Rural Electric Consumers and Beneficiaries of Development and Advancement, Inc.	RECOBODA	318,511	0.60	1
22	Bagong Henerasyon	BH (BAGONG HENERASYON)	288,752	0.54	1
23	Bahay para sa Pamilyang Pilipino, Inc.	BAHAY	281,793	0.53	1
24	Construction Workers Solidarity	CWS	277,940	0.52	1
25	Abang Lingkod, Inc.	ABANG LINGKOD	275,199	0.52	1
26	Advocacy for Teacher Empowerment through Action Cooperation and Harmony Towards Educational Reform	A TEACHER	274,460	0.52	1
27	Barangay Health Wellness	BHW	269,518	0.51	1
28	Social Amelioration and Genuine Intervention on Poverty	SAGIP	257,313	0.48	1
29	Trade Union Congress Party	TUCP	256,059	0.48	1
30	Magdalo Para Sa Pilipino	MAGDALO	253,536	0.48	1
31	Galing sa Puso Party	GP	249,484	0.47	1
32	Manila Teachers Savings and Loan Association, Inc.	MANILA TEACHERS'	249,416	0.47	1
33	Rebulosyonaryong Alyansa Makabansa	RAM	238,150	0.45	1
34	Alagaan Natin Ating Kalusugan	ANAKALUSUGAN	237,629	0.45	1
35	Ako Padayon Pilipino	AKO PADAYON	235,112	0.44	1
36	Ang Asosayon Sang Mangunguma nga Bisaya-OWA Mangunguma, Inc.	AAMBIS-OWA	234,552	0.44	1
37	Kusug Tausug	KUSUG TAUSUG	228,224	0.43	1
38	Dumper Philippines Taxi Drivers Association, Inc.	DUMPER PTDA	223,199	0.42	1
39	Talino at Galing Pilipino	TGP	217,525	0.41	1
40	Public Safety Alliance for Transformation and Rule of Law	PATROL	216,653	0.41	1
41	**Alyansa ng mga Mamamayang Probinsyano**	**ANG PROBINSYANO**	**212,649**	**0.40**	**1**
42	Anak Mindanao	AMIN	212,323	0.40	1
43	Agricultural Sector Alliance of the Philippines	AGAP	208,752	0.39	1
44	LPG Marketers Association, Inc.	LPGMA	208,219	0.39	1
45	OFW Family Club, Inc.	OFW Family	200,881	0.38	1
46	Kabalikat ng Mamamayan	KABAYAN	198,571	0.37	1
47	Democratic Independent Workers Association	DIWA	196,385	0.37	1
48	Kabataan Party List	KABATAAN	195,837	0.37	1
49	Aksyon Magsasaka-Partido Tinig ng Masa [AKMA-PTM]	AKMA-PTM	191,804	0.36	1
50	Serbisyo sa Bayan Party	SBP	180,535	0.34	1
51	ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	179,909	0.34	1
52	Akbayan Citizens Action Party	AKBAYAN	173,356	0.32	1
x	xxx	xxx	xxx	xx	x
	One Patriotic Coalition of Marginalized Nationals	**1 PACMAN**	**156,001**	**0.29**	**0**
	Marino Samahan ng mga Seaman, Inc.	**MARINO**	**123,753**	**0.23**	**0**
	Probinsyano Ako	**PROBINSYANO AKO**	**72,740**	**0.13**	**0**
		TOTAL	27,884,790		53

Lastly, applying the last step, it shows that petitioners Angkla and SBP and petitioner-in-intervention AKMA-PTM, together with *Akbayan,* would each gain a seat while *Bayan Muna*, 1 PACMAN, *Marino* and *Probinsyano Ako* will lose their seats. The final tally looks -

Party-List	Acronym	Seats
Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	3
Bayan Muna	BAYAN MUNA	2
Ako Bicol Political Party	AKO BICOL	2
Citizens Battle Against Corruption	CIBAC	2
Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	2
One Patriotic Coalition of Marginalized Nationals	1 PACMAN	1
Marino Samahan ng mga Seaman, Inc.	MARINO	1
Probinsyano Ako	PROBINSYANO AKO	1
Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	1
Magkakasama sa Sakahan, Kaunlaran	MAGSASAKA	1
Association of Philippines Electric Cooperatives	APEC	1
Gabriela Women's Party	GABRIELA	1
An Waray	AN WARAY	1
Cooperative NATCCO Network	COOP-NATCCO	1
Act Teachers	ACT TEACHERS	1
Philippine Rural Electric Cooperatives Association, Inc.	PHILRECA	1
Ako Bisaya, Inc.	AKO BISAYA	1
Tingog Sinirangan	TINGOG SINIRANGAN	1
Abono	ABONO	1
Buhay Hayaan Yumabong	BUHAY	1
Duty to Energize the Republic Through the Enlightenment of the Youth	DUTERTE YOUTH	1
Kalinga-Advocacy for Social Empowerment and Nation Building	KALINGA	1
Puwersa ng Bayaning Atleta	PBA	1
Alliance of Organizations, Networks, and Associations of the Philippines	ALONA	1
Rural Electric Consumers and Beneficiaries of Development and Advancement, Inc.	RECOBODA	1
Bagong Henerasyon	BH (BAGONG HENERASYON)	1
Bahay para sa Pamilyang Pilipino, Inc.	BAHAY	1
Construction Workers Solidarity	CWS	1
Abang Lingkod, Inc.	ABANG LINGKOD	1
Advocacy for Teacher Empowerment through Action Cooperation and Harmony Towards Educational Reform	A TEACHER	1
Barangay Health Wellness	BHW	1
Social Amelioration and Genuine Intervention on Poverty	SAGIP	1
Trade Union Congress Party	TUCP	1
Magdalo Para Sa Pilipino	MAGDALO	1
Galing sa Puso Party	GP	1
Manila Teachers Savings and Loan Association, Inc.	MANILA TEACHERS'	1
Rebulosyonaryong Alyansa Makabansa	RAM	1
Alagaan Natin Ating Kalusugan	ANAKALUSUGAN	1
Ako Padayon Pilipino	AKO PADAYON	1
Ang Asosasyon Sang Mangunguma nga Bisaya-OWA Mangunguma, Inc.	AAMBIS-OWA	1
Kusug Tausug	KUSUG TAUSUG	1
Dumper Philippines Taxi Drivers Association, Inc.	DUMPER PTDA	1
Talino at Galing ng Pinoy	TGP	1
Public Safety Alliance for Transformation and Rule of Law, Inc.	PATROL	1
Anak Mindanao	AMIN	1
Agricultural Sector Alliance of the Philippines	AGAP	1
LPG Marketers Association, Inc.	LPGMA	1
OFW Family Club, Inc.	OFW Family	1

Kabalikat ng Mamamayan	KABAYAN	1
Democratic Independent Workers Association	DIWA	1
Kabataan Party List	KABATAAN	1
Aksyon Magsasaka-Partido Tinig ng Masa [AKMA-PTM]	AKMA-PTM	1
Serbisyo sa Bayan Party	SBP	1
ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	1
Akbayan Citizens Action Party	AKBAYAN	1
	TOTAL:	**61**

It does not escape my attention that petitioners' formula and the Court's approval of the same would result in the ouster of incumbent members of the House of Representatives without due proceedings conducted by the House of Representatives Electoral Tribunal. However, removal of incumbent members through procedures other than through the HRET have been recognized in the past. In *Dimaporo v. Hon. Mitra*,[44] the Court recognized several ways on how incumbent members of the Congress may be removed from their seat or their term considerably shortened, thus:

> That the ground cited in Section 67, Article IX of B.P. Blg. 881 is not mentioned in the Constitution itself as a mode of shortening the tenure of office of members of Congress, does not preclude its application to present members of Congress. Section 2 of Article XI provides that "(t)he President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. *All other public officers and employees may be removed from office as provided by law, but not by impeachment*."] Such constitutional expression clearly recognizes that the four (4) grounds found in Article VI of the Constitution by which the tenure of a Congressman may be shortened are not exclusive. As held in the case of *State ex rel. Berge vs. Lansing*, the expression in the constitution of the circumstances which shall bring about a vacancy does not necessarily exclude all others. Neither does it preclude the legislature from prescribing other grounds. Events so enumerated in the constitution or statutes are merely conditions the occurrence of any one of which the office shall become vacant not as a penalty but simply as the legal effect of any one of the events. And would it not be preposterous to say that a congressman cannot die and cut his tenure because death is not one of the grounds provided for in the Constitution? The framers of our fundamental law never intended such absurdity. (citations omitted)

Be that as it may, as petitioners' formula would drastically change the membership of Congress and might derail Congressional agenda at the time of a global health pandemic, I am of the opinion that the application of this formula be made prospectively.

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[44] 279 Phil. 843, 857-858 (1991).

I am well aware that, if ever, this will be the third fine-tuning of the formula for the allocation of party-list seats. There is nothing wrong with this. As long as we live in a vibrant democracy, we must continue to perfect our democratic system.

As stated in the main opinion, it is quite unfortunate that the Court was unable to muster enough votes to either affirm or reject the *BANAT* formula. While a stand-still is a less than desirable result for the Court, it becomes an opportunity for the Honorable members of Congress to fine-tune R.A. No. 7941, now with the benefit of the collective wisdom of the Court from *Veterans* to *BANAT* to *Angkla*.

I vote to **GRANT** the petition; **SET ASIDE** COMELEC Resolution dated May 22, 2019 in NBC No. 004-19; and **DECLARE** the phrase "in proportion to their total number of votes" found in Section 11(b) of Republic Act No. 7941 as **UNCONSTITUTIONAL**. The formula discussed above should take effect **PROSPECTIVELY**.

Let a copy of this Opinion be furnished the President of the Senate and the Speaker of the House of Representatives for their information and guidance.

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court