

EN BANC

G.R. No. 246816 – ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC. (ANGKLA), and SERBIYSO 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 G. GUIA, COMMISSIONER MA. ROWENA AMELIA V. GUANZON, COMMISSIONER SOCCORRO B. INTING, COMMISSIONER MARLON S. CASQUEJO, AND COMMISSIONER ANTONIO T. KHO, JR., *respondent*.

AKSYON MAGSASAKA – TINIG PARTIDO NG MASA (AKMA-PTM), *petitioner-in-intervention*.

Promulgated:
September 15, 2020

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CONCURRING OPINION

LEONEN, J.:

I concur with Associate Justice Amy C. Lazaro Javier's (Justice Lazaro-Javier) *ponencia* denying the Petition for Certiorari and Prohibition filed by petitioners Ang Partido ng Marinong Pilipino, Inc. (ANGKLA) and Serbisyo sa Bayan Party (SBP), and sustaining National Board of Canvassers Resolution No. 004-19, which declared the winning party-list groups in the May 13, 2019 elections.

In addition, I invite attention to prevailing parameters that operationalize the party-list system. I reiterate a position that I initially articulated in *Atong Paglaum, Inc. v. Commission on Elections*,¹ that this Court's effort at shaping understanding of how the party-list system should be operationalized to carry out the Constitution's objectives should not be limited to calibrating numerical formulation to identify winners.

I

The party-list system, as provided for in Article VI, Section 5 of the 1987 Constitution,² is the domestic iteration of proportional representation,

¹ 707 Phil. 454 (2013) [Per J. Carpio, En Banc].

² CONST., art. VI, sec. 5 provides:

SECTION 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those

an electoral system that has long existed in other jurisdictions and which currently exists in a multiplicity of jurisdictions.³

Our election of party-list representatives stands out in domestic elections dominated by the “first past the post”⁴ system. In a first past the post system, candidates win or are elected on the basis of a simple plurality. “The winning candidate is simply the person who wins the most votes; in theory he or she could be elected with two votes, if every other candidate only secured a single vote.”⁵ This applies to our elections for President, Vice President, provincial governors and vice governors, city or municipal mayors and vice mayors, as well as barangay chairpersons. For these positions, winning candidates are simply candidates who outvote all other candidates. The same is true for the election of members of the House of Representatives representing legislative districts. The first past the post system similarly governs the election of senators and members of the *sangguniang panlalawigan*, *sangguniang panglungsod*, *sangguniang bayan*, and *sangguniang barangay*. In these collegial bodies however, multiple vacancies are simultaneously contested. Therefore, several individuals—as many as there are vacancies to be filled—are simultaneously elected, i.e., the highest ranking candidates corresponding to the number of vacancies.

Unlike the winning candidates for other elective public positions, members of the House of Representatives under the party-list system are elected through a system of proportional representation. In proportional representation, seats are allocated in accordance with the proportion of the electorate that supports a political party, organization, or coalition. Winning an election, therefore, does not hinge on outranking competing candidates, but on securing proportional thresholds instead.

As the unique, domestic iteration of a conceptual electoral mechanism shared with many jurisdictions, the Philippine party-list system is created by Article VI, Section 5 of the 1987 Constitution. The same provision, as well as Article VI, Section 6, spell out the party-list system’s basic and immutable parameters:

who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

(3) Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative.

(4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

³ See *Electoral Systems*, THE ELECTORAL KNOWLEDGE NETWORK, <http://aceproject.org/epic-en/CDTable?question=ES005&view=country&set_language=en> (last accessed on September 15, 2020).

⁴ See *Electoral Systems*, THE ELECTORAL KNOWLEDGE NETWORK, <<http://aceproject.org/ace-en/topics/es/esd/esd01/esd01a/default>> (last accessed on September 15, 2020).

⁵ Id.

SECTION 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, *and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.*

(2) *The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.*

(3) Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative.

(4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

SECTION 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election. (Emphasis supplied)

Thus, the party-list system is open to “registered national, regional, and sectoral parties or organizations.” Further, party-list representatives shall “constitute twenty *per centum* of the total number of representatives including those under the party list.” A transitory manner of filling party-list seats “[f]or three consecutive terms after the ratification of th[e] Constitution” is also provided. Likewise, a party-list representative must be “a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, [and] able to read and write.” Apart from these, Article VI, Section 5 stipulates that election to the party-list system shall be “provided by law.”

It is in keeping with Article VI, Section 5’s injunction that Republic Act No. 7941 or the Party-List System Act, was passed in 1995. 

Section 10 of the Party-List System Act provides for the manner of voting party-list representatives. Sections 11 and 12 concern the allocation of party-list seats:

SECTION 10. *Manner of Voting.* — Every voter shall be entitled to two (2) votes: the first is a vote for candidate for member of the House of Representatives in his legislative district, and the second, a vote for the party, organization, or coalition he wants represented in the house of Representatives: Provided, That a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted: Provided, finally, That the first election under the party-list system shall be held in May 1998.

The COMELEC shall undertake the necessary information campaign for purposes of educating the electorate on the matter of the party-list system.

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

For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

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

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

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

Thus, according to Section 11, the initial threshold is two percent (2%) of the total votes cast for the system. Every party, organization, or coalition obtaining two percent (2%) of the total votes cast for the party-list

system shall be entitled to one (1) seat each. Thereafter, "those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the [sic] proportion to their total number of votes[.]" Regardless of potentially much larger proportions obtained by parties, organizations or coalitions, however, "each party, organization, or coalition shall be entitled to not more than three (3) seats."

While ranking is involved, winning seats in the party-list system does not ultimately or exclusively depend on an ordinal system as winning seats in first past the post elections does. Rather, it relies on the extent of proportionate shares *vis-à-vis* a total figure that varies from one election to another, that is, the total number of votes cast for the party-list system in a given election.

II

The party-list system is fundamentally a mechanism of proportional representation where proportions are reckoned in relation to the total number of votes cast for the party-list system in a given election, and where groups that obtain larger proportions of votes are naturally and logically placed at an advantage over those who obtain less. This basic nature is expressed in Section 12 of the Party-List System Act: "The COMELEC shall tally all the votes... on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained... as against the total nationwide votes cast for the party-list system."

This same basic nature renders absurd and unacceptable petitioners' contention that, after seats are allotted to those groups that hurdled the two-percent-threshold, "[v]otes amounting to two percent (2%)... obtained by each of the participating parties... should then be deducted from the total votes of each of these party-list groups that have been entitled to and given guaranteed seats[.]"⁶ and that, "[t]he remaining party-list seats... sh[ould] then be distributed in proportion to the recomputed number of votes[.]"⁷

Ignoring votes in the reckoning of proportions runs afoul of a party-list election as a race contested by the entire roster of candidates and won in consideration of all the votes cast by the electorate. Reckoning on the basis of a "recomputed number of votes"⁸ artificially redraws the electoral terrain. It results in the distribution of remaining party-list seats based on an altered field of contestants and diminished number of votes. This undoes the logical advantage properly earned by those that hurdled the two-percent-threshold

⁶ *Ponencia*, p. 3.

⁷ *Id.*

⁸ *Id.*

and enables the election of groups, even if their performance was manifestly worse off than those who have hurdled the basic threshold.

To concede petitioners' plea would be to negate the valid and sensible distinction between those that hurdled the threshold and those that did not. Ultimately, it violates the party-list system's fundamental objective of enabling "meaningful representation [secured through]... the mandate of a sufficient number of people."⁹

Justice Lazaro-Javier's illustration of the sheer absurdity, not to mention, injustice and mockery of the totality of the electoral exercise which shall be induced by favorable action on petitioners' plea is well-taken:

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

In petitioners' proposal, however, a 2% deduction will be imposed against party-list X's before proceeding to the second round. This would result in X falling to the bottom of the ranking with zero percent (0%) vote, dimming its chances, if not disqualifying it altogether, for the second round. This is *contrary to the language of the statute which points to proportionality in relation to the TOTAL number of votes received by a party, organization or coalition in the party-list election, and the intention behind the law to acknowledge the two-percenters' right to participate in the second round of seat allocation for the additional seats.*¹⁰

It does not help petitioners' position, as the *ponencia* points out,¹¹ that petitioners asserted an alternative method of allocating party-list seats only in the wake of their defeat in the 2019 elections. They found nothing wrong with the method that is currently in place when they were benefitting from and, on the basis of it, proclaimed winners in previous elections. An electoral system is meant to be an objective and dispassionate means for determining winners in an election. For it to be upheld at one instance and assailed at another based on how one fares is to undermine an electoral system's requisite neutrality and to subvert meaningful democratic representation.

III

To facilitate the objectives of proportional representation as a supplement to the dominant electoral system, the Constitution and the Party-

⁹ *Veterans Federation Party v. Commission on Elections*, 396 Phil. 419, 441 (2000) [Per J. Panganiban, En Banc].

¹⁰ *Ponencia*, pp. 27–28.

¹¹ *Id.* at 10–11.

List System Act prescribe parameters that operationalize our unique, domestic mode of proportional representation.

Jurisprudence has, in turn, interpreted relevant constitutional and statutory provisions in a manner that will give effect to the party-list system's lofty objectives. Of particular note is *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*,¹² where this Court clarified the rules for allocating party-list seats:

In determining the allocation of seats for party-list representatives under Section 11 of [Republic Act] 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.¹³

The Party-List System Act's stipulation of an initial two-percent (2%) threshold serves a vital interest by filtering party-list representation to those groups that have secured the support of a sufficiently significant portion of the electorate.

Our elections for the House of Representatives is akin to elections for the German *Bundestag* (federal parliament) where voters similarly cast a first vote or "*Erststimme*" for district representative (which follows a first past the post system), and a second vote or "*Zweitstimme*" for a political party.¹⁴ For a party to occupy seats, it must secure a five percent (5%) threshold (n.b., more than doubly higher than our standard). This threshold "excludes very small parties from parliamentary representation[.]"¹⁵ This exclusionary effect is deliberate and far from an inadvertent consequence: "[t]his system was put in place to prevent smaller splinter parties - like those

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

¹³ Id. at 162.

¹⁴ See Michael Krennerich, *Germany: The Original Mixed Member Proportional System*, THE ELECTORAL KNOWLEDGE NETWORK, <<http://aceproject.org/regions-en/countries-and-territories/DE/case-studies/germany-the-original-mixed-member-proportional-system>> (last accessed on September 15, 2020).

¹⁵ Id.

that bogged down the Weimar Republic in the 1920s - from entering parliament."¹⁶

Accordingly, it has long been settled by this Court that the two percent (2%) threshold is a valid standard that furthers the interest of robust democratic representation. From this, it follows that the Party-List System Act validly distinguishes between those groups that meet the two percent (2%) threshold, and those that fail to do so:

The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very essence of "representation." Under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them. But to have meaningful representation, the elected persons must have the mandate of a sufficient number of people. Otherwise, in a legislature features the party-list system, the result might be the proliferation of small groups which are incapable of contributing significant legislation, and which might even pose a threat to the stability of Congress. Thus, even legislative districts are apportioned according to "the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" to ensure meaningful local representation.¹⁷

IV

As an alternative to the predominant electoral system, the party-list system is principally concerned with advancing democratic representation. It endeavors to make up for the shortcomings of traditional elections through simple plurality. This is a particularly acute concern in the experience of Philippine electoral politics. As I have previously explained in my Separate Opinion in *Atong Paglaum, Inc. v. Commission on Elections*:¹⁸

The core principle that defines the relationship between our government and those that it governs is captured in the constitutional phrase that ours is a "democratic and republican state". A democratic and republican state is founded on effective representation. It is also founded on the idea that it is the electorate's choices that must be given full consideration.

.....

The party list system is an attempt to introduce a new system of politics in our country, one where voters choose platforms and principles primarily and candidate-nominees secondarily. As provided in the Constitution, the party list system's intentions are broader than simply to

¹⁶ *How does the German general election work?*, DW, <<https://www.dw.com/en/how-does-the-german-general-election-work/a-37805756>> (last accessed on September 15, 2020).

¹⁷ *Veterans Federation Party v. Commission on Elections*, 396 Phil. 419, 441 (2000) [Per J. Panganiban, En Banc].

¹⁸ 707 Phil. 454 (2013) [Per J. Carpio, En Banc].

“ensure that those who are marginalized and represented become lawmakers themselves”.

Historically, our electoral exercises privileged the popular and, perhaps, pedigreed individual candidate over platforms and political programs. Political parties were convenient amalgamation[s] of electoral candidates from the national to the local level that gravitated towards a few of its leaders who could marshal the resources to supplement the electoral campaigns of their members. Most elections were choices between competing personalities often with very little discernible differences in their interpretation and solutions for contemporary issues. The electorate chose on the bases of personality and popularity; only after the candidates were elected to public offices will they later find out the concrete political programs that the candidate will execute. Our history is replete with instances where the programs that were executed lacked cohesion on the basis of principle. In a sense, our electoral politics alienated and marginalized large parts of our population.

The party list system was introduced to challenge the *status quo*. It could not have been intended to enhance and further entrench the same system. It is the party or the organization that is elected. It is the party list group that authorizes, hopefully through a democratic process, a priority list of its nominees. It is also the party list group that can delist or remove their nominees, and hence replace him or her, should he or she act inconsistently with the avowed principles and platforms of governance of their organization. In short, the party list system assists genuine political parties to evolve. Genuine political parties enable true representation, and hence, provide the potential for us to realize a “democratic and republican state”.¹⁹ (Citations omitted)

Even as it aims to challenge dominant ways in politics, the party-list system remains, at its core, an alternative electoral system. It is not a mechanism for affirmative action *per se* where predetermined underrepresented or marginalized groups are given exclusive access to seats in Congress. Thus, though enabling sectoral representation, the party-list system is also open to national and regional parties or organizations. It facilitates representation by drawing the focus away from personalities, popularity, and patronage; to programs, principles, and policies. It does not do so by extending extraordinary benefits to select sectors. It challenges voters to see beyond what the dominant electoral system sustains, as well as candidates and political parties to consolidate on considerations other than what may suffice in personality-affirming races won by simple plurality. It allows the forging of organizations and coalitions, and facilitates representation on the basis of ideologies, causes, and ideals that go beyond strict sectoral lines:

In a sense, challenging the politics of personality by constitutionally entrenching the ability of political parties and organizations to instill party discipline can redound to the benefit of those who have been marginalized and underrepresented in the past. It makes it possible for nominees to be chosen on the basis of their loyalty to

¹⁹ Id. at 738-741.

principle and platform rather than their family affiliation. It encourages more collective action by the membership of the party and hence will reduce the possibility that the party be controlled only by a select few.

Thus, it is not only “for the marginalized and underrepresented in our midst . . . who wallow in poverty, destitution and infirmity” that the party list system was enacted. Rather, it was for everyone in so far as attempting a reform in our politics.

But, based on our recent experiences, requiring “national, regional and sectoral parties and organizations” that participate in the party list system to be representatives of the “marginalized and underrepresented sector” and be “marginalized and underrepresented themselves” is to engage in an ambiguous and dangerous fiction that undermines the possibility for vibrant party politics in our country. This requirement, in fact, was the very requirement that “gut the substance of the party list system”.

Worse, contrary to the text of the constitution, it fails to appreciate the true context of the party list system.

....

It is inconceivable that the party list system framed in our Constitution make it impossible to accommodate green or ecological parties of various political persuasions.

Environmental causes do not have as their constituency only those who are marginalized or underrepresented. Neither do they only have for their constituency those “who wallow in poverty, destitution and infirmity”. In truth, all of us, regardless of economic class, are constituents of ecological advocacies.

Also, political parties organized along ideological lines — the socialist or even right wing political parties — are groups motivated by a their own narratives of our history, a vision of what society can be and how it can get there. There is no limit to the economic class that can be gripped by the cogency of their philosophies and the resulting political platforms. Allowing them space in the House of Representatives if they have the constituency that can win them a seat will enrich the deliberations in that legislative chamber. Having them voice out opinions — whether true or false — should make the choices of our representatives richer. It will make the choices of our representatives more democratic.

Ideologically oriented parties work for the benefit of those who are marginalized and underrepresented, but they do not necessarily come mainly from that economic class. Just a glance at the history of strong political parties in different jurisdictions will show that it will be the public intellectuals within these parties who will provide their rationale and continually guide their membership in the interpretation of events and, thus, inform their movement forward.

Political ideologies have people with kindred ideas as their constituents. They may care for the marginalized and underrepresented, but they are not themselves — nor for their effectivity in the House of

Representatives should we require that they can only come from that class.²⁰ (Citations omitted)

In keeping with these, I have articulated, and continue to maintain, that participation in the party-list system should be in keeping with the following benchmarks:

First, the party list system includes national, regional and sectoral parties and organizations;

Second, there is no need to show that they represent the "marginalized and underrepresented". However, they will have to clearly show how their plans will impact on the "marginalized and underrepresented". Should the party list group prefer to represent a sector, then our rulings in *Ang Bagong Bayani* and *BANAT* will apply to them;

Third, the parties or organizations that participate in the party list system must not also be a participant in the election of representatives for the legislative districts. In other words, political parties that field candidates for legislative districts cannot also participate in the party list system;

Fourth, the parties or organizations must have political platforms guided by a vision of society, an understanding of history, a statement of their philosophies and how this translates into realistic political platforms;

Fifth, the parties or organizations — not only the nominees — must have concrete and verifiable track record of political participation showing their translation of their political platforms into action;

Sixth, the parties or organizations that apply for registration must be organized solely for the purpose of participating in electoral exercises;

Seventh, they must have existed for a considerable period, such as three (3) years, prior to their registration. Within that period they should be able to show concrete activities that are in line with their political platforms;

Eighth, they must have such numbers in their actual active membership roster so as to be able to mount a credible campaign for purpose of enticing their audience (national, regional or sectoral) for their election;

Ninth, a substantial number of these members must have participated in the political activities of the organization;

Tenth, the party list group must have a governing structure that is not only democratically elected but also one which is not dominated by the nominees themselves;

Eleventh, the nominees of the political party must be selected through a transparent and democratic process;

²⁰ Id. at 741-744.

Twelfth, the source of the funding and other resources used by the party or organization must be clear and should not point to a few dominant contributors specifically of individuals with families that are or have participated in the elections for representatives of legislative districts;

Thirteenth, the political party or party list organization must be able to win within the two elections subsequent to their registration;

Fourteenth, they must not espouse violence; and

Fifteenth, the party list group is not a religious organization.²¹
(Citations omitted)

Without these considerations, the party-list system will become a farce, an avenue that will be dominated by the moneyed elite; further marginalizing truly ideological, as opposed to merely personal, politics.

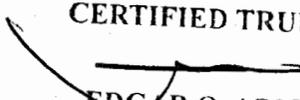
ACCORDINGLY, I vote that the present Petition for Certiorari and Prohibition and Petition-in-Intervention be **DISMISSED**.



MARVIC M.V.F. LEONEN
Associate Justice

²¹ Id. at 751-753.

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court