EN BANC

G.R. No. 246816 – ANGKLA: Ang Partido ng mga Marinong Pilipino, Inc. (ANGKLA), and Serbisyo sa Bayan Party (SBP), *Petitioners,* **v. COMELEC, et al.,** *Repondents,* **Aksyon Magsasaka-Tinig Partido ng Masa (AKMA-PTM),** *Petitioner-in-intervention.*

Promulgated:

<u>September 15, 2020</u>

X - X

DISSENTING OPINION

ZALAMEDA, J.:

> *If ever there is a hierarchy of protected expressions, political expression would occupy the highest rank, and among different kinds of political expression,* **the subject of fair and honest elections would be at the top.**[1]
>
> - Senior Associate Justice Antonio T. Carpio

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 – Tinig Partido ng Masa* (AKMA-PTM), assail Resolution No. 004-19 issued by respondent Commission on Elections (COMELEC), acting as the National Board of Canvassers (NBOC). They argue that said Resolution was issued with grave abuse of discretion amounting to lack or excess of jurisdiction for blatantly violating the procedure introduced by the Court in its Resolution in *BANAT v. COMELEC* (*BANAT* Resolution),[2] the equal protection clause, and the principle of "one voter, one party-list vote."[3]

Corollary to this, petitioners assail the constitutionality of Section 11(b) of Republic Act No. (RA) 7941,[4] or the Party-List System Act, providing for

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[1] Associate Justice Antonio T. Carpio's Separate Opinion in *Chavez v. Gonzales,* 569 Phil. 155 (2008). Emphasis supplied.

[2] G.R. Nos. 179271 and 179295 (Resolution), 08 July 2009; 609 Phil. 751 (2009).

[3] Amended Petition, pp. 2-3.

[4] An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor.

the double counting of votes in the allocation of additional seats:

> Section 11. Number of Party-List Representatives. – 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.

NBOC Resolution No. 004-19, issued on 22 May 2019, proclaimed the party-list groups who won in the 13 May 2019 elections. On the basis of the tabulated Party List Canvass Report No. 8,[5] the COMELEC, sitting *en banc* as NBOC, applied the formula adopted in *BANAT v. COMELEC*[6] (*BANAT* Decision) in the allocation of the 61 party-list seats. As a result, only 51 party-list groups were allocated seats leaving petitioners, being among those ranked lower, without a party-list seat.

Petitioners insist that the allocation of additional seats in proportion to a party's total number of votes results in the double counting of votes in favor of the two percenters, which violates the equal protection clause. Petitioners claim that, consistent with the *BANAT* Resolution, the 2% votes counted in the first round should first be excluded or deducted from the total votes of the two percenters before proceeding to the second round of seat allocation. According to petitioner's interpretation of the *BANAT* Resolution, the correct formula should be:

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. Votes amounting to two percent (2%) of the total votes cast for the party-list system should be deducted from the total votes of the party-list entitled to guaranteed seats.

4. The parties, organizations, and coalitions, shall then be

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[5] *Rollo*, pp. 148-150.
[6] G.R. Nos. 179271 & 179295, 21 April 2009; 604 Phil. 131 (2009).

re-ranked from highest to the lowest based on the recomputed number of votes after deducting the two percent (2%) stated in paragraph 3.

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

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

The party-list system is enshrined in the 1987 Constitution, which mandates that 20% of the total membership of the House of Representatives is reserved for party-list representatives. Paragraphs 1 and 2 of Article VI, Section 5, of the Constitution read:
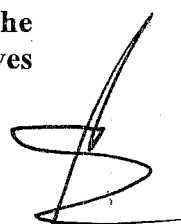
> SECTION 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their 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. (Emphasis supplied)

Although the party-list system is provided in the Constitution, an enabling law had to be passed to implement this provision. Congress was vested with the duty to define and prescribe the mechanics for the party-list system. Thus, in 1995, Congress enacted RA 7941. Sections 11 and 12 thereof provide:

> 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.**

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[7] *Rollo,* p. 133.

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 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.** (Emphasis supplied.)

The party-list system is a mechanism for proportional representation in the election of representatives in the House of Representatives from national, regional, and sectoral parties or organizations of coalitions thereof registered with the COMELEC.[8] In *Ang Bagong Bayani-OFW v. COMELEC,*[9] the Court explained the nature of the Philippine party-list system:

The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. It intends to make the marginalized and the underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of representative democracy. Thus, allowing all individuals and groups, including those which now dominate district elections, to have the same opportunity to

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[8] Section 3 of RA 7941.
[9] G.R. Nos. 1457589 & 147613, 26 June 2001; 412 Phil. 308 (2001).

participate in party-list elections would desecrate this lofty objective and mongrelize the social justice mechanism into an atrocious veneer for traditional politics.

Under Section 18 of RA 7941,[10] the COMELEC is mandated to promulgate the necessary rules and regulations to carry out the purposes of the Act. On 25 June 1996, the COMELEC *en banc* promulgated Resolution No. 2847, prescribing the "Rules and Regulations Governing the Election of Party-List Representatives Through the Party-List System." Under these rules and regulations, the seats are allocated at the rate of one seat per 2% of votes obtained, provided that each party shall be entitled to not more than three seats. Further, only those who have mustered at least 2% of the total votes cast for the party-list are allocated seats for party-list representative.[11] This formula is illustrated in Annex "A" of Resolution No. 2847.

In the *BANAT* Decision,[12] the Court held that **the 2% threshold in relation to the distribution of the additional seats as found in the second clause of Section 11 (b) of RA 7941 is unconstitutional.** The Court explained:

> We rule that, **in computing the allocation of additional seats, the continued operation of the two percent threshold for the distribution of the additional seats as found in the second clause of Section 11 (b) of R.A. No. 7941 is unconstitutional.** This Court finds that the two percent threshold makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50. **The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives.**
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> x x x x

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[10] Section 18. *Rules and Regulations.* – The COMELEC shall promulgate the necessary rules and regulations as may be necessary to carry out the purposes of this Act.

[11] The COMELEC's "Primer on the Party-List System of Representation in the House of Representatives" provides the following procedure in the allocation of party-list seats:
  1. The parties shall be ranked from highest to lowest based on the number and percentage of votes garnered during the elections;
  2. Only a maximum of three seats may be allowed per party. Seats are allocated at the rate of one seat per 2% of votes obtained; and
  3. Unallocated seats shall be distributed among the parties which have not yet obtained the maximum 3 seats, provided they have mustered at least 2% of votes.

  The variance of percentage in excess of 2% or 4% (equivalent to 1 or 2 seats that have already been obtained, respectively) shall be ranked and be the basis for allocating the remaining seats.

[12] *Supra* note 6.

We therefore strike down the two percent threshold only in relation to the distribution of the additional seats as found in the second clause of Section 11 (b) of R.A. No. 7941. **The two percent threshold presents an unwarranted obstacle to the full implementation of Section 5 (2), Article VI of the Constitution and prevents the attainment of "the broadest possible representation of party, sectoral or group interests in the House of Representatives."** (Emphasis supplied)

Further, the Court adopted the following procedure in determining the allocation of seats for party-list representatives under Section 11 of RA 7941:

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

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

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

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

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

x x x **There are two steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats,** 38, which is the difference between the 55 maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. **The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed.** We distributed all of the remaining 38 seats in the second round of seat allocation. Finally, we

apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled.[13] (Emphasis supplied)

The Court ruled in the *BANAT* Decision that the 2% threshold is only void in relation to the distribution of the additional seats as this would frustrate the permissive ceiling of 20% constitution of party-list membership in the House of Representatives. The Court averred that **the allocation of additional seats to party-list organizations is still in proportion to their total number of votes.**

In the subsequent *BANAT* Resolution, the Court made some clarifications in view of the reduction of the number of legislative districts,[14] which resulted in a corresponding change in the number of party-list seats from 55 to 54. The Court likewise ruled on the motion for partial reconsideration-in-intervention of Armi Jane Roa-Borje, the third nominee of Citizen's Battle Against Corruption (CIBAC). The Court held:

> To address Roa-Borje's motion for partial reconsideration-in-intervention and for purposes of computing the results in future party-list elections, we reiterate that **in the second step of the second round of seat allocation, the preference in the distribution of seats should be in accordance with the higher percentage and higher rank, without limiting the distribution to parties receiving two-percent of the votes.** To limit the distribution of seats to the two-percenters would mathematically prevent the filling up of all the available party-list seats.
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> In the table above, CIBAC cannot claim a third seat from the seat allocated to TUCP, the last ranked party allocated with a seat. **CIBAC's 2.81%** *(from the percentage of 4.81% less the 2% for its guaranteed seat)* **has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03. The fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties.** Thus, for purposes of the second step in the second round of seat allocation, TUCP has a higher rank than CIBAC.[15] (Emphasis supplied)

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[13] *Id.*

[14] The number of legislative districts was reduced to 219 following the Court's ruling in *Sema v. COMELEC* [G.R. Nos. 177597 & 178628, 16 July 2008], declaring void the creation of the Province of Sharif Kabunsuan.

[15] *Supra* note 2.

Petitioners claim that this subsequent ruling of the Court in *BANAT* prohibited the "reusage or double counting of votes in the allocation of additional party-list seats."[16] In line with this ruling, petitioners maintain that the 2% votes counted in the first round should first be excluded or deducted from the total votes of the two percenters before proceeding to the second round of seat allocation.

The statement of the Court in the *BANAT* Resolution regarding the allocation of additional seats is indeed confusing. In computing CIBAC's fractional seat after receiving two seats, the Court multiplied CIBAC's 2.81% **(from the percentage of 4.81% less the 2% for its guaranteed seat)** by 37, the additional seats for distribution in the second round, resulting in 1.03 seat, leaving a .03 fractional seat, which is lower than TUCP's .38 fractional seat. It would thus appear that the Court deducted the 2%, representing the guaranteed seat allocation, from the total percentage of votes of the two percenters (specifically CIBAC, in this case) before allocating the additional seats. However, the Court went on to clarify that **the fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties.**

A scrutiny of the *BANAT* Resolution reveals that the Court still maintained its formula in allocating the party-list seats as enunciated in the *BANAT* Decision. This is clear from the tabulation made by the Court, modifying the COMELEC's computation in NBC No. 09-001. The formula for allocating seats remained the same except that the multiplier for the allocation of additional seats was reduced to 36 (the difference between 54, the number of available party-list seats, and 18, the number of guaranteed seats). **In computing for additional seats, the Court still used the percentage of votes garnered over the total votes for party list without deducting the 2% votes already allotted in the first round for guaranteed seats,** contrary to petitioners' interpretation. In short, **the allocation of additional seats to party-list organizations is still in proportion to their total number of votes, without deducting the 2% votes already allotted for their guaranteed seats.**

In the *BANAT* Resolution,[17] the Court reiterated that "[t]here are two

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[16] *Rollo*, p. 108.

[17] The *BANAT* Resolution summarized the four parameters in a Philippine-style party-list election system as follows:

1. Twenty percent of the total number of the membership of the House of Representatives is the maximum number of seats available to party-list organizations, such that there is

steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats, which is the difference between the maximum seats reserved under the Party-List System and the guaranteed seats of the two-percenters. **The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed.** We distributed all of the remaining seats in the second round of seat allocation. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled."[18]

Applying the two steps in the second round of seat allocation, the Court, in the **first step**, multiplied CIBAC's 4.81% by 37 and got 1.73, which corresponds to CIBAC's one (1) additional seat since fractional seats are disregarded. It should be stressed that in this first step of the second round of seat allocation, the Court still used the percentage of votes garnered over the total votes for party list *without deducting the 2% votes already allotted in the first round for guaranteed seats*, which in CIBAC's case is 4.81%. However, in the **second step** of the second round, the Court did not consider CIBAC's fractional seat of 0.73 (the fractional remainder from 1.73 after the allocation of 1 additional seat to CIBAC), which would have entitled CIBAC to an additional seat. Instead, in the second step of the second round of seat allocation, wherein the preference in the distribution is in accordance with the higher percentage and higher rank without limiting the distribution of seats to the two percenters, it appears that **the Court had a separate equation for the two percenters when it deducted the 2% guaranteed seat from the percentage of votes of the two percenters.**

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automatically one party-list seat for every four existing legislative districts.

2. Garnering two percent of the total votes cast in the party-list elections guarantees a party-list organization one seat. The guaranteed seats shall be distributed in a first round of seat allocation to parties receiving at least two percent of the total party-list votes.

3. The additional seats, that is, the remaining seats after allocation of the guaranteed seats, shall be distributed to the party-list organizations including those that received less than two percent of the total votes. The continued operation of the two percent threshold as it applies to the allocation of the additional seats is now unconstitutional because this threshold mathematically and physically prevents the filling up of the available party-list seats. **The additional seats shall be distributed to the parties in a second round of seat allocation according to the two-step procedure laid down in the Decision of 21 April 2009 as clarified in this Resolution.**

4. The three-seat cap is constitutional. The three-seat cap is intended by the Legislature to prevent any party from dominating the party-list system. There is no violation of the Constitution because the 1987 Constitution does not require absolute proportionality for the party-list system. The well-settled rule is that courts will not question the wisdom of the Legislature as long as it is not violative of the Constitution. (Emphasis supplied)

[18] See footnotes 6 and 7 of the BANAT Resolution.

In determining the ranking of parties in the second step of the second round of seat allocation, the Court multiplied CIBAC's 2.81% **(from the percentage of 4.81% less the 2% for its guaranteed seat)** by 37, the additional seats for distribution in the second round, resulting in 1.03 seat, **leaving a 0.03 fractional seat which is lower than TUCP's 0.38 fractional seat.** Thus, in this second step of the second round of seat allocation, CIBAC cannot claim a third seat since TUCP, the last ranked party allocated with a seat, has a higher rank than CIBAC.
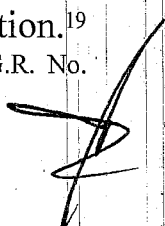
To clarify, in the first step of the second round of seat allocation, the **allocation of additional seats to the two percenters is still in proportion to their total number of votes, without deducting the 2% votes already allotted for their guaranteed seats.** It is only in the second step of the second round of seat allocation, wherein the preference in the distribution is in accordance with the higher percentage and higher rank without limiting the distribution of seats to the two percenters, that **the 2% guaranteed seat is deducted from the percentage of votes of the two percenters to compute its fractional seat in order to determine its ranking for additional seat allocation.**

It is therefore erroneous for petitioners to insist that the *BANAT* Resolution excluded the 2% votes counted in the first round from the total votes of the two percenters before proceeding to the second round of seat allocation. Nonetheless, I agree with petitioners that the non-exclusion of the 2% guaranteed votes in the allocation of additional seats results to double counting of votes, which violates the equal protection clause.

Petitioners next argue that the last paragraph of Section 11 of RA 7941, which entitles parties to additional seats "in proportion to their total number of votes," is unconstitutional. I agree. This provision violates the equal protection clause for allowing the 2% already allotted for a guaranteed seat to be re-used and re-counted in the allocation of additional seats. I submit that this clause perpetuates the double counting of votes which is anathema to the "one person, one vote" rule rooted in the Equal Protection Clause.

One of the basic tenets of democracy is that each person has one vote. The principle of "one person, one vote" or equality in voting power is the essence of our democracy and is inherent in proportional representation.[19]

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[19] Justice Antonio T. Carpio's Separate Opinion in *Aquino III v. Commission on Elections* [G.R. No. 189793, 07 April 2010].

All votes are equal and should carry the same weight. In every conduct of elections, the government must ensure that each and every vote cast should have equal voting power. Otherwise, the equal protection of laws, as guaranteed under our Constitution, finds no application.

Indeed, to consider the 2% votes representing the guaranteed seats again would logically grant these votes more weight and influence as compared to other votes in support of those party-list organizations that did not garner at least 2% (the non-two percenters). This assigns undue preference to those party-list organizations who obtained at least 2% of the total number of votes (the two percenters); not only making it easier for the two percenters to get additional seats, but making it more difficult for the non-two percenters to obtain a single seat. The principle of "one person, one vote" ensures that a voter's constitutional right to vote in elections is not wrongfully denied or diluted. The double counting of votes for the two percenters would effectively dilute the weight of the votes for the non-two percenters, and is inconsistent with the voters' constitutional right to an equally weighted vote.

We must fiercely guard against the unconstitutional double counting of votes. To this end, I propose that the COMELEC's formula, as provided in the implementing rules and regulations of RA 7941[20] and explained further in the primer on the party-list system of representation, be utilized but with some modification.

The COMELEC's formula **adheres to the 3-seat cap and emphasizes the preference for the two percenters, which is consistent with RA 7941. However, the COMELEC's formula needs to be modified as regards limiting the allocation of seats only to the two percenters since this would negate the 20% allocation of party-list membership in the House of Representatives provided under Article VI, Section 5 of the Constitution.** The Court in *BANAT v. COMELEC*,[21] already held the 2% threshold as void in relation to the distribution of the additional seats as this would frustrate the permissive ceiling of 20% constitution of party-list membership in the House of Representatives. Thus, I present the following procedure in the allocation of seats in the party-list system:

1. Rank the parties, organizations, and coalitions from the highest to the lowest based on the number of votes they

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[20] COMELEC Resolution No. 2847, prescribing the "Rules and Regulations Governing the Election of Party-List Representatives Through the Party-List System."
[21] G.R. Nos. 179271 & 179295, 21 April 2009; 604 Phil. 131 (2009).

garnered during the elections.

2.   Compute the percentage of votes garnered by the parties, organizations, and coalitions over the total votes cast for the party–list system to distinguish the two percenters and the non-two percenters.

Example:
    Two Percenters:
    Party A = 9%
    Party B = 5.8%
    Party C = 3.2%
    Party D = 2.1%

    Non- Two Percenters:
    Party E = 1.9%
    Party F = 1.85%
    Party G = 1.7%
    Party H = 1.5%
    Party I = 1.1%
    Party J = 0.9%
    Party K = 0.6%

3.   Determine the number of seats allocated for the two percenters. That is, one seat shall be allotted for every 2% garnered, provided that the total seats allocated per parties, organizations, and coalitions should not exceed 3 seats.

In the example, the two percenters shall have one (1) seat per 2% of votes obtained:

    Party A (9%)   = 3 seats* [2% x 3 = 6%]
    Party B (5.8%) = 2 seats [2% x 2 =4%]
    Party C (3.2%) = 1 seat [2% x 1 = 2%]
    Party D (2.1%) = 1 seat [2% x 1 = 2%]

*not 4 seats because of the 3-seat cap

4.   Compute the percentage not consumed (variance) in the allocation of seats for the two percenters by subtracting the percentage consumed in allocating the seats (Step #3) from the percentage of votes (Step #2). Disregard those that have already obtained the maximum 3-seat allocation.

Computing the percentage not consumed (or variance) by

the two percenters in the example:

Party A = exempted since already obtained the
maximum 3 seats allowed.
Party B = 5.8% - 4% = **1.8%**
Party C = 3.1% - 2% = **1.2%**
Party D = 2.1% - 2% = **0.1%**

5. **Re-rank** the parties, organizations, and coalitions from highest to lowest **based on the percentage not consumed for the two percenters** and on the **percentage of votes for the non-two percenters**. Again, disregard the two percenters that have already obtained the maximum 3-seat allocation.

In the example, the new ranking for allocating the remaining seats will be:

(Non-Two Percenters: Party E = 1.9%; Party F = 1.85%; Party G = 1.7%; Party H = 1.5%; Party I = 1.1%; Party J = 0.9%; Party K = 0.6%)

1- Party E (1.9%)
2- Party F (1.85%)
3 - Party B (1.8%)
4 - Party G (1.7%)
5 - Party H (1.5%)
6 - Party C (1.2%)
7 - Party I (1.1%)
8 - Party J (0.9%)
9 - Party K (0.6%)
10 - Party D (0.1%)

In this **new ranking** for the allocation of the remaining seats, **the two percenters that have not attained the maximum 3 seats are still included.** However, **only** the percentage **not consumed** is considered (see Step #4). The percentage representing the seats already allocated (2% for 1 seat and 4% for 2 seats) is **deducted** from the original percentage of the two percenters so that **there will be no double counting of votes.**

6. The remaining party-list seats shall be distributed by assigning one party-list seat to the re-ranked parties, organizations, and coalitions, starting from the highest ranked until all available seats are completely distributed.

This suggested procedure is similar to the COMELEC's formula as provided in the implementing rules and regulations and the primer on RA 7941. However, under the COMELEC's formula, only those parties which have received at least 2% of the total votes cast for the party-list system were entitled to party-list seats.

In my suggested formula, after the two percenters are allocated seats, *i.e.*, one seat per 2% of votes obtained, but not to exceed 3 seats, the variance in excess of 2% or 4% (equivalent to 1 or 2 seats that have already been obtained, respectively) shall be computed and accordingly ranked together with the percentage of the non-two percenters. This new ranking **based on the percentage not consumed for the two percenters** (percentage of votes **less** the percentage consumed on the allocated seats) and on the **percentage of votes for the non-two percenters** (since they were not yet allocated any seats for not having reached the 2% threshold) shall be the basis for allocating the remaining seats until all available seats are distributed.

Applying this formula in the distribution of available party-list seats, where the total number of votes under the party-list system is 27,884,790 and the number of seats reserved for the party-list representatives is 61:

A	B	C	D	E	F	G	H	I	J
R a n k	Party/ Organization/ Coalition	Number of Votes Garnered	Percentage (%) of Votes [C/Total Number of Votes Under Party-List]	Number of Seats Allocated for the Two Percenters [1 seat for every 2%; Maximum of 3 seats]	Percentage Consumed [E x 2%]	Variance [D-F]	New Rank For Additional Seats [Based on the Variance (G) for the Two Percenters and Percentage of Votes (D) for the non-Two Percenters]	Addit ional Seats	Total Seats [E+I]
1	ACT-CIS	2,651,987	9.5105	3					3
2	BAYAN MUNA	1,117,403	4.0072	2	4	0.0072			2
3	AKO BICOL	1,049,040	3.7621	1	2	1.7621	3	1	2
4	CIBAC	929,718	3.3341	1	2	1.3341	13	1	2
5	ANG PROBIN-SYANO	770,344	2.7626	1	2	0.7626	39	1	2
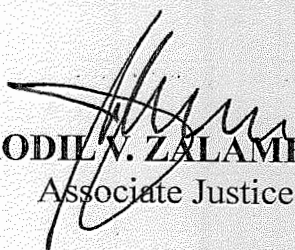
6	1PACMAN	713,969	2.5604	1	2	0.5604					1
7	MARINO	681,448	2.4438	1	2	0.4438					1
8	PROBIN-SIYANO AKO	630,435	2.2609	1	2	0.2609					1
9	SENIOR CITIZENS	516,927	1.8538						1	1	1
10	MAGSA-SAKA	496,337	1.7800						2	1	1
11	APEC	480,874	1.7245						4	1	1
12	GABRIELA	449,440	1.6118						5	1	1
13	AN WARAY	442,090	1.5854						6	1	1
14	COOP NATCCO	417,285	1.4965						7	1	1
15	ACT TEACHERS	395,327	1.4177						8	1	1
16	PHILRECA	394,966	1.4164						9	1	1
17	AKO BISAYA	394,304	1.4140						10	1	1
18	TINGOG SINIRA-NGAN	391,211	1.4030						11	1	1
19	ABONO	378,204	1.3563						12	1	1
20	BUHAY	361,493	1.2964						14	1	1
21	DUTERTE YOUTH	354,639	1.2718						15	1	1
22	KALINGA	339,665	1.2181						16	1	1
23	PBA	326,258	1.1700						17	1	1
24	ALONA	320,000	1.1476						18	1	1
25	RECO-BODA	318,511	1.1422						19	1	1
26	BH	288,752	1.0355						20	1	1
27	BAHAY	281,793	1.0106						21	1	1
28	CWS	277,940	0.9967						22	1	1
29	ABANG LINGKOD	275,199	0.9869						23	1	1
30	A TEACHER	274,460	0.9843						24	1	1
31	BHW	269,518	0.9665						25	1	1
32	SAGIP	257,313	0.9228						26	1	1
33	TUCP	256,059	0.9183						27	1	1
34	MAGDALO	253,536	0.9092						28	1	1
35	GP	249,484	0.8947						29	1	1
36	MANILA TEACHERS	249,416	0.8945						30	1	1
37	RAM	238,150	0.8540						31	1	1
38	ANAK-KALU-SUGAN	237,629	0.8522						32	1	1
39	AKO PADAYON	235,112	0.8432						33	1	1
40	AAMBIS OOWA	234,552	0.8411						34	1	1
41	KUSUG TAUSUG	228,224	0.8185						35	1	1
42	DUMPER PTDA	223,199	0.8004						36	1	1
43	TGP	217,525	0.7801						37	1	1
44	PATROL	216,653	0.7770						38	1	1
45	AMIN	212,323	0.7614						40	1	1
46	AGAP	208,752	0.7486						41	1	1
47	LPGMA	208,219	0.7467						42	1	1
48	OFW FAMILY	200,881	0.7204						43	1	1
49	KABAYAN	198,571	0.7121						44	1	1
50	DIWA	196,385	0.7043						45	1	1

51	KABA-TAAN	195,837	0.7023				46	1	1
52	AKMA-PTM	191,804	0.6878				47	1	1
53	SBP	180,535	0.6474				48	1	1
54	ANGKLA	179,909	0.6452				49	1	1
55	AKBAYAN	173,356	0.6217				50	1	1
56	WOW PILIPINAS	172,080	0.6171				51		
	TOTAL			11				50	61

In adopting the above procedure, I truly believe that proportionality is achieved without the unconstitutional "double votes," thus allowing the broadest possible representation of interests in the party-list system by enhancing their chances to compete for and win seats in the House of Representatives.[22]

Accordingly, I vote to **GRANT** the present Petitions and to:

1. **DECLARE** the phrase "in proportion to their total number of votes" in Section 11(b) of RA 7941 as **UNCONSTITUTIONAL;**

2. **DECLARE** the COMELEC Resolution NBOC No. 004-19 dated 22 May 2019 as **INVALID** insofar as the party-list seats erroneously proclaimed, in accordance with the revised procedure set herein; and

3. **ORDER** the COMELEC to reconvene and hear all the relevant parties, properly allocate the seats under the party-list system, and after which, issue a new NBOC resolution proclaiming the winning party-list organizations based on the revised procedure.

RODIL V. ZALAMEDA
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

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[22] Section 2, RA 7941.