EN BANC

G.R. No. 261123 – DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH (DUTERTE YOUTH) PARTY-LIST, represented by CHAIRMAN RONALD GIAN CARLO L. CARDEMA and REPRESENTATIVE DUCIELLE MARIE S. CARDEMA, *Petitioner*, **v. COMMISSION ON ELECTIONS, HOUSE OF REPRESENTATIVES, KOMUNIDAD NG PAMILYA, PASYENTE AT PERSONS WITH DISABILITIES (P3PWD) PARTY-LIST, and ITS NOMINEES led by ROWENA AMELIA V. GUANZON,** *Respondents*.

G.R. No. 261876 – DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH [DUTERTE-YOUTH] PARTY-LIST, represented by CHAIRPERSON RONALD GIAN CARLO L. CARDEMA and REPRESENTATIVE DUCIELLE MARIE S. CARDEMA, *Petitioner*, **v. MA. ROWENA AMELIA V. GUANZON,** *Respondent*.

Promulgated:

August 20, 2024

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DISSENTING OPINION

CAGUIOA, *J.*:

Before the Court are two consolidated petitions:

First, G.R. No. 261123, an Urgent Petition for *Certiorari*[1] (Substitution Petition) where petitioners Duty to Energize the Republic Through the Enlightenment of the Youth Party-List (DUTERTE Youth) and Ronald Gian Carlo L. Cardema and Ducielle Marie S. Cardema seek to annul the following resolutions of the Commission on Elections (COMELEC):

a) Minute Resolution No. 22-0774[2] dated June 15, 2022 (First Assailed Resolution) which granted the withdrawal of the nominations of the previous set of nominees of private respondent Komunidad ng Pamilya, Pasyente, at Persons with Disabilities Party-List (P3PWD), and which likewise gave due course to the latter's new list of nominees;

b) Minute Resolution No. 22-0798[3] dated June 22, 2022 (Second Assailed Resolution) noting the Manifestation of P3PWD

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1 *Rollo* (G.R. No. 261123), pp. 3–26.

2 *Id.* at 254–261. Rendered by Acting Chairperson Socorro B. Inting, Commissioners Marlon S. Casquejo, Aimee P. Ferolino, and Rey E. Bulay. Commissioner Ferolino attached her comment, *see id.* at 262–264.

3 *Id.* at 265–267. Rendered by Acting Chairperson Socorro B. Inting, Commissioners Marlon S. Casquejo, and Rey E. Bulay. Commissioner Ferolino voted to defer, *see id.* at 268.

regarding the proof of publication of its New List of Nominees, and considering the same as satisfactory compliance with the First Assailed Resolution; and

c) Minute Resolution No. 22-0810[4] dated June 22, 2022 (Third Assailed Resolution) denying DUTERTE Youth's Opposition for lack of merit.

Second, G.R. No. 261876, a Petition for Indirect Contempt (Contempt Petition) against respondent Ma. Rowena Amelia V. Guanzon (Guanzon) for the purported violation of the Court's Temporary Restraining Order[5] (TRO) issued on June 29, 2022 in the Substitution Petition.

The *ponencia* grants the Substitution Petition, declares null and void the COMELEC's First Assailed Resolution, and makes permanent the Court's previously-issued TRO dated June 29, 2022. Consequently, it directs P3PWD to submit additional nominees pursuant to Section 16[6] of Republic Act No. 7941[7] and strictly enjoins it from renominating for the 19th Congress the five nominees whose substitutions were declared null and void by the *ponencia*, including Guanzon.

Upon the other hand, the *ponencia* dismisses, for lack of merit, the Contempt Petition.

While I concur as to the dismissal of the Contempt Petition, I strongly dissent to the *ponencia*'s ruling in the Substitution Petition.

In this Dissenting Opinion, I make clear my position that:

1) COMELEC has the exclusive jurisdiction to rule on the withdrawal and substitution of party-list nominees;

2) the Third Assailed Resolution—the one which resolved the Opposition filed by DUTERTE Youth—was issued in the COMELEC's exercise of its quasi-judicial powers. Not having been previously resolved by the COMELEC Division before the COMELEC *en banc* issued said resolution, the same is void;

3) the voting requirement for COMELEC in resolving quasi-judicial matters is a majority of all its incumbent Members;

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4 *Id.* at 269–274. Rendered by Acting Chairperson Socorro B. Inting, Commissioners Marlon S. Casquejo, and Rey E. Bulay. Commissioner Ferolino voted to defer, *see id.* at 275.

5 *Id.* at 40–43.

6 **Section 16**. *Vacancy.* In case of vacancy in the seats reserved for party-list representatives, the vacancy shall be automatically filled by the next representative from the list of nominees in the order submitted to the COMELEC by the same party, organization, or coalition, who shall serve for the unexpired term. If the list is exhausted, the party, organization coalition concerned shall submit additional nominees.

7 Otherwise known as the "Party-List System Act" approved on March 3, 1995.

4) it was *ultra vires* for COMELEC to set deadlines on the substitution of nominees of party-list groups;

5) the submission of additional party-list nominees does not violate the people's right to information on matters of public concern;

6) considering that the deadlines set by COMELEC are void, there is no legal basis to find that COMELEC committed grave abuse of discretion in allowing the substitution beyond such deadlines. The reasons advanced in the *ponencia* are not legal grounds; and

7) even on the assumption that the deadlines are valid, the same merely renders void the acts of P3PWD relating to its belated substitution of nominees, not its choice of nominees. The belated substitution could not have affected the qualifications of the individual nominees. Thus, it is egregious error for the *ponencia* to enjoin P3PWD from renominating the same individuals.

COMELEC has the exclusive jurisdiction to rule on the withdrawal and substitution of party-list nominees

P3PWD questions the COMELEC's jurisdiction in issuing the assailed resolutions, contending that Guanzon had already become a Member of the House of Representatives (HoR) so that the case now falls under the exclusive jurisdiction of the House of Representatives Electoral Tribunal (HRET).

P3PWD is mistaken. Guanzon had not become a Member of the HoR. In any case, the nature or subject-matter of the case places it outside the jurisdiction of HRET.

HRET's jurisdiction is provided under Article VI, Section 17 of the 1987 Constitution, thus:

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

This constitutional provision is echoed in the HRET's Rules of Procedure[8] (HRET Rules):

> RULE 15. Jurisdiction.—The Tribunal is the *sole judge of all contests relating to the election, returns, and qualifications of the Members* of the House of Representatives.
>
> To be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation; (2) a proper oath; and (3) assumption of office. (Emphasis supplied)

What is clear from these provisions is the intent of its framers to limit the jurisdiction of HRET to ***only*** **contests relating to the election, returns, and qualifications of Members** of the HoR.

Thus, there are two tiers in determining whether the constitutional jurisdiction of HRET has attached: the *first* involves the status of respondent—that is, he or she must have already become a Member of the HoR; and the *second* involves the nature of the action—that is, that it must be a contest relating to the election, returns, and qualifications of respondent.

Anent the first tier, settled in jurisprudence are the three requisites to become a "Member" of the HoR for purposes of determining if the HRET's jurisdiction has already attached, namely: that the candidate has had (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.[9] This is also reiterated in the above Rule 15 of the HRET Rules.

Even as the first two requisites to becoming a Member of the HoR are present in the instant case, the last requisite did not occur since it was effectively prevented from happening by the Court's TRO.

Anent the first requisite, it is undisputed that Guanzon was validly proclaimed by COMELEC sitting as the National Board of Canvassers.[10]

On the second requisite of a valid oath of office, I agree with the *ponencia* insofar as it ruled that "Guanzon ... already ... took her oath."[11] Indeed, Guanzon satisfied the requisite of a proper oath of office when she took the same before Court of Appeals Associate Justice Edwin D. Sorongon (Justice Sorongon) on June 23, 2022.[12]

This is consistent with Section 4 of the Rules of the House of Representatives of the 19th Congress (HoR Rules) which relevantly requires only "the administration of an oath for the office by a duly authorized public

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[8] THE 2015 REVISED RULES OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL.
[9] *Reyes v. COMELEC*, 720 Phil. 174, 201–202 (2013) [Per J. Perez, *En Banc*].
[10] *Ponencia*, p. 7.
[11] *Id.* at 19.
[12] *Id.* at 7.

officer."[13] It is also aligned with Section 6 of the same HoR Rules which declares as "valid" such oath taken before a duly-authorized public officer, and, at the same time, declares as merely a "ceremonial affirmation" of such valid oath, the subsequent oath of office in open session taken before the House Speaker, the practice of which has become a tradition and a "parliamentary precedent," thus:

> **Section 6.** ***Oath or Affirmation of Members.*** – Members shall take their oath or affirmation collectively or individually before the Speaker in open session. *The oath of office administered by the Speaker in open session to all Members present is a ceremonial affirmation of prior and valid oaths of office administered to them by duly authorized public officers.* Following parliamentary precedents, **Members** take their oath before the Speaker in open session **to enable them to enter into the performance of their functions and participate in the deliberations and other proceedings of the House.** (Emphasis supplied)

During the oral arguments, the nature of the oath-before-the-Speaker requirement as merely a ceremonial affirmation of the prior valid oath before a duly-authorized public officer—and not itself a requisite for the validity of the latter oath—was brought to the fore. As it turns out, the latter notion—that both oaths taken before the public officer and before the speaker are necessary—not only runs counter to the plain language of the relevant law, but is quite literally impossible to achieve, so that even DUTERTE Youth's own counsel could not help but admit that Guanzon, who indisputably has not taken an oath before the Speaker, had already complied with the "valid oath" requirement of the law when she took the same before Justice Sorongon—a duly authorized public officer:

> [ATTY. EDWARD G. GIALOGO (DUTERTE Youth's Counsel)]:
>
> And my personal opinion on the matter, Your Honor, is that, **the oath required before the [HRET] can assume jurisdiction is an oath taken before any officer authorized to administer oath, Your Honor.**
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> ....
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> [ASSOCIATE JUSTICE ALFREDO BENJAMIN S. CAGUIOA]:
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> Let's go to **Rule 2, Section 4 of the Rules of the House of Representatives. It says, an oath of office may be administered by any, and I quote: "duly authorized public officer," correct?**
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> ATTY. GIALOGO:
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> Yes, Your Honor, I confirm the same, Your Honor.

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[13] The full text of Section 4 of the HoR Rules reads:

> **Section 4.** ***Composition.*** – The membership of the House shall be composed of elected representatives of legislative districts and those elected through the party-list system. Membership as Representative of a legislative district commences upon proclamation as a winning candidate, *the administration of an oath for the office by a duly authorized public officer* and assumption of office on June 30 following the election. ... (Emphasis supplied)

ASSOCIATE JUSTICE CAGUIOA:

So in other words, an oath of office before a public officer is enough?

ATTY. GIALOGO:

Yes, Your Honor, for purposes of HRET acquiring jurisdiction, Your Honor.

....

ASSOCIATE JUSTICE CAGUIOA:

Okay. I will leave it there and let me go back to the question of the oath. Okay, under [Article VI, Section 7] of the Constitution, the term of office of members of the House commences at noon of June 30 after the elections, correct?

ATTY. GIALOGO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

And under Rule 1, Section 1 of the Rules of the House, the Speaker is elected on the first meeting of the House?

ATTY. GIALOGO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Which is set on the fourth Monday of July after the elections, correct?

ATTY. GIALOGO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

And under [Article VI, Section 16(1)] of the Constitution, the Speaker is elected by a majority vote of all the Members of the House, correct?

ATTY. GIALOGO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

And is it also required that the Speaker is a Member of the House, correct?

ATTY. GIALOGO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

But a winning candidate is not considered a member unless he took a valid oath of office, correct?

ATTY. GIALOGO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So, if the oath required to become a Member of the House is an oath before the Speaker, there can be no Member of the House prior to the fourth Monday of July, correct?

ATTY. GIALOGO:

Yes, Your Honor, if we follow the decision of the majority of this Honorable Court in the case of *Uy v. COMELEC*, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

And if there are no members, no one can vote for a Speaker, correct?

ATTY. GIALOGO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

And if there are no members, no one is qualified to be a Speaker, correct?

ATTY. GIALOGO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So do you agree with me that requiring the oath before the Speaker to become a Member of the House is illogical? You're talking to the other Members of the Court as well, if I may remind you.

ATTY. GIALOGO:

I'm sorry to say, Your Honor, but it appears to be that "Yes," Your Honor.[14] (Emphasis supplied)

Be that as it may, there is no dispute as to Guanzon failing to meet the third requisite of assumption to office, because the same was legally prevented by the Court's TRO issued on June 29, 2022, or one day prior to the June 30, 2022 start of the term of all elected officials in the 2022 National and Local Elections, which would have included Guanzon, pursuant to Article VI, Section 7[15] of the Constitution.

Guanzon's camp has raised an issue regarding the legal effect of the TRO—specifically, whether, considering its language, the same had effectively prevented the constitutional effect of the arrival of June 30, 2022, or Guanzon's assumption of office. The TRO reads:

> **ISSUE** a **TEMPORARY RESTRAINING ORDER**, effective immediately and continuing until further orders from this Court, enjoining (i) respondent [COMELEC] from implementing its assailed resolution approving the substitution of the original nominees of P3PWD Party-List with five (5) new nominees led by former COMELEC Commissioner,

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[14] TSN, Oral Arguments, January 23, 2024, pp. 24, 28–30.

[15] Section 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

....

> Rowena Amelia V. Guanzon, and issuing a Certificate of Proclamation to the substituting nominees and (ii) respondent House of Representatives from allowing Guanzon and the other substituting nominees to assume office as Member of the House of Representatives during the pendency of this case[.][16] (Emphasis in the original)

On this specific issue, I agree with the *ponencia*'s finding that the TRO indeed worked to stop Guanzon's assumption to office despite the passage of June 30, 2022. Based on its language, the TRO is a directive to COMELEC preventing it from executing the First Assailed Resolution, which granted the substitution of P3PWD's original nominees; and an instruction to HoR from allowing Guanzon and the other nominees from assuming office. Manifest is the Court's intention to restrain Guanzon's assumption to the office of a Member of the HoR. This is unequivocal; and while Guanzon may nitpick on the language of the TRO—particularly, the absence of an instruction to Guanzon, specifically, not to assume office, or to mention that she be considered exempted from the June 30, 2022 start of the term under the Constitution—she cannot reasonably deny that the ultimate objective of the Court in issuing the TRO was to stay her assumption to office pending the resolution of the case.

Thus, Guanzon did not become a Member of the HoR. The first tier in the two-tiered test is not satisfied.

In any case, the second tier—that the nature or subject matter of the case should be that it is a contest involving the election, returns, or qualifications of a Member of the HoR, is also not satisfied. The nature of the Substitution Petition is nowhere near what is required in the second tier of the test to determine HRET's jurisdiction, the case being one only concerning the withdrawal of nominations of P3PWD, and the submission of the list of the substitute nominees beyond the deadline set by COMELEC. Simply put, the case is not a "contest involving the election, returns and qualifications of a Member of the [HoR]" (even on the assumption that Guanzon assumed office as such Member).

In *Javier v. COMELEC*,[17] the Court had the occasion to dissect the nature of a case that falls under the HRET's jurisdiction. Specifically, *Javier* defined the phrase "elections, returns, and qualifications," to wit:

> The phrase "election, returns and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. But if it is necessary to specify, we can say that **"election" referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; "returns" to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the**

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[16] *Rollo*, p. 41.

[17] 228 Phil. 193 (1986) [Per J. Cruz, *En Banc*].

> **election returns;** and **"qualifications" to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy.**[18] (Emphasis supplied)

Applying *Javier* to the instant case, it cannot be said that there is an issue as to the election or returns of respondents here. Perhaps, what can be more controversial is the question of whether the case involves the "qualifications" of a Member of the HoR. It does not.

The qualifications and eligibilities of a Member of the HoR are laid down in Article VI, Section 6 of the 1987 Constitution, Sections 12 and 68 of the Omnibus Election Code,[19] Section 40 of the Local Government Code of 1991,[20] and for party-list nominees, Section 9 of Republic Act No. 7941. None of these qualifications and eligibilities are at issue in the present case. Likewise, to state the obvious, these qualifications and eligibilities clearly *cannot* pertain to the party-list as they can only attach to persons.

Indeed, in the case of party-lists, although they are the ones which voters vote for during the elections, they do not become "Members" of the HoR once elected; rather, it is their nominees who assume office as such Members and who must observe the qualifications of the office under Article VI, Section 6 of the 1987 Constitution. This is the Court's ruling in *ABC (Alliance for Barangay Concerns) Party List v. COMELEC*.[21] This distinction is important in determining which between HRET and COMELEC has jurisdiction over a case affecting a party-list who has a nominee sitting as an incumbent representative in the HoR. As it is the nominee—and not the party-list—who is the Member of the HoR, then the HRET's jurisdiction is limited only to cases involving the election, returns, and qualifications of the sitting nominee, and not those of the party-list.

That the subject-matter of the present case is the validity of the substitution of P3PWD's nominees and that the same falls under the jurisdiction of COMELEC, and that, finally, the same cannot fall under the jurisdiction of HRET—all these are matters expressly admitted by Atty. Christian Robert S. Lim, counsel for respondents P3PWD and Guanzon:

> ASSOCIATE JUSTICE CAGUIOA:
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> Okay. According to Section 17, Article 6 of the Constitution, HRET is the sole judge of all contests relating to the election[,] returns[,] and qualifications of their respective members. You just mentioned earlier that Atty. Guanzon has all the eligibility requirements, and she has not been disqualified.
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> ATTY. LIM:
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> Yes, Your Honor.

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[18] *Id.* at 205–206.
[19] Batas Pambansa Blg. 881 (1985).
[20] Republic Act No. 7160 (1991).
[21] 661 Phil. 452 (2011) [Per J. Peralta, *En Banc*].

ASSOCIATE JUSTICE CAGUIOA:
What is involved here is not election or returns, correct?

ATTY. LIM:
Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:
What is involved here as ASG mentioned is the validity of the substitution, correct?

ATTY. LIM:
In light of the COMELEC deadline.

ASSOCIATE JUSTICE CAGUIOA:
In light of the COMELEC deadline.

ATTY. LIM:
Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Is that an issue that the HRET should address?

ATTY. LIM:
No, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:
It should be this Court?

ATTY. LIM:
Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Therefore, do I understand you correctly that in fact to determine who has jurisdiction, there are four requirements, proclamation.

ATTY. LIM:
Valid proclamation.

ASSOCIATE JUSTICE CAGUIOA:
Oath, assumption of office[,] and the nature of the controversy?

ATTY. LIM:
Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:
And if the nature of the controversy is one that does not fall in, and I quote, "Election contest relating [to] election[,] returns[,] and qualification[s]", then it should not be with the HRET?

ATTY. LIM:
Yes, Your Honor.[22] (Emphasis supplied)

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[22] TSN of the Oral Arguments held on January 23, 2024, pp. 61–63.

In sum, not only is jurisdiction properly retained by COMELEC for failure of Guanzon to assume office pursuant to the Court's TRO, but also because the nature of the case involves a subject matter cognizable solely by COMELEC.

The issue involves a quasi-judicial matter which should have first been heard and tried before the COMELEC Division

The *ponencia* rules that all three assailed resolutions issued by COMELEC were purely administrative matters. It ratiocinates that the substitution of P3PWD's nominees merely called for the enforcement of election laws and rules,[23] and that in resolving the same, COMELEC did not exercise discretionary authority, or adjudicatory power to hear and resolve the controversy.[24] This is because, per the *ponencia,* when COMELEC ruled on DUTERTE Youth's Opposition, no legal controversy arose because there was "no need to determine which between [DUTERTE] Youth and P3PWD was entitled to a seat"[25] in the HoR or any conflict of rights between these two party-lists.[26] Thus, the *ponencia* concluded that the filing of an opposition alone will not convert the issuance of the resolution into a quasi-judicial function.

I disagree. What comprises a legal controversy—*and therefore what makes a matter quasi-judicial in nature*—is far broader than the question of who between the parties is entitled to a seat in Congress.

Here, while the issuance of the first two assailed resolutions—the ones which merely granted the withdrawal of the nominees of P3PWD (without any opposition filed against such withdrawal) and that which noted P3PWD's manifestation regarding the publication of its new set of substitute nominees, respectively—involved merely the administrative powers of COMELEC, the issuance of the Third Assailed Resolution denying DUTERTE Youth's Opposition involved an exercise of the COMELEC's quasi-judicial powers, i.e., its power to resolve controversies arising from the enforcement of election laws. The Court expounded on this in *Villanueva v. Palawan Council for Sustainable Development*,[27] thus:

> A government agency performs adjudicatory functions when it renders decisions or awards that determine the rights of adversarial parties, which decisions or awards have the same effect as a judgment of the court. ... "[J]udicial or quasi-judicial function involves the **determination of what the law is, and what the legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the**

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[23] *Ponencia*, p. 15.
[24] *Id.*
[25] *Id.* at 16.
[26] *Id.*
[27] 704 Phil. 555 (2013) [Per J. Del Castillo, Second Division].

> **facts obtaining, the adjudication of their respective rights.** In other words, the tribunal, board or officer exercising judicial or quasi-judicial function must be clothed with power and authority to pass judgment or render a decision on the controversy construing and applying the laws to that end."[28] (Emphasis supplied)

Here, DUTERTE Youth's Opposition filed before COMELEC raised a contrariety of rights, namely: the public interest of ensuring that election laws and regulations are faithfully executed, on the one hand, *versus* the assailed resolutions of COMELEC which allegedly violated said right when they allowed the substitution of P3PWD's nominees beyond the deadlines set by COMELEC itself, as well as P3PWD's claimed right to be allowed such substitution, on the other hand.

To recall, COMELEC set deadlines relating to substitution of nominees in COMELEC Resolution No. 10690,[29] when it provided that the "[w]ithdrawal of nominations and substitution of nominees ... shall be ... filed with the Law Department *not later than NOVEMBER 15, 2021*."[30] DUTERTE Youth, relying on the clear and express tenor of COMELEC Resolution No. 10690 as well as on alleged violations of Republic Act No. 3019[31] and Republic Act No. 6713,[32] filed the Opposition to implore COMELEC to deny P3PWD's substitution of nominees. The Opposition, however, is not merely a call to enforce election laws and rules—it necessarily clashes with P3PWD's invoked right to substitute nominees under Republic Act No. 7941, and ultimately, its right to field representatives in Congress as a winning party list. It bears noting that during the Oral Arguments, DUTERTE Youth's position is that considering the mandatory deadlines in COMELEC Resolution No. 10690, P3PWD is *absolutely precluded* from submitting a list of substitute nominees, i.e., the effect of the initial nominees' withdrawal is forfeiture of P3PWD's seat in Congress.[33]

Clearly, the issues raised in the Opposition call for a determination of what the applicable law is and the contending parties' legal rights with respect to the matter in controversy, i.e., a party-list's right to field additional nominees post-elections vis-à-vis the general interest that prevailing laws and regulations are enforced according to their letter. Putting these contending views side-by-side reveals the end goal of adjudicating on these respective rights.

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[28] *Id.* at 566, *citing Doran v. Judge Luczon, Jr.*, 534 Phil. 198, 204–205 (2006) [Per J. Sandoval-Gutierrez, Second Division].

[29] Promulgated on January 27, 2021.

[30] COMELEC Resolution No. 9366 (2012), Rule 4, sec. 4, as amended by Resolution No. 10690 (2021), sec. 6.

[31] Anti-Graft and Corrupt Practices Act (1960).

[32] Code of Conduct and Ethical Standards for Public Officials and Employees (1989).

[33] TSN of the Oral Arguments held on November 14, 2023, p. 52; TSN of the Oral Arguments held on January 23, 2024, p. 42.

The *ponencia*, however, submits that a general interest cannot be the source of a conflict of rights.[34] This, however, is belied by the very language of the COMELEC Rules of Procedure, which explicitly recognizes that common or general interests may be the subject of an action brought before COMELEC:

> PART III
> INITIATION OF ACTIONS OR PROCEEDINGS BEFORE THE COMMISSION
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> Rule 5.—Parties to Actions or Proceedings
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> ....
>
> **Sec. 5. Class Suit.—When the subject matter of the controversy is one of *common or general interest to many persons*,** and the parties are so numerous that it is impracticable to bring them all before the Commission, one or more may sue or defend for the benefit of all. ... (Emphasis supplied)

While, indeed, there is no specific remedy in the COMELEC Rules of Procedure under which DUTERTE Youth's Opposition squarely falls, what is clear is that DUTERTE Youth filed an action asserting the public right to the faithful execution of laws, and the same allegedly runs counter to P3PWD's right to representation in Congress.

Further, as astutely observed by Associate Justice Mario V. Lopez in his Concurring and Dissenting Opinion, DUTERTE Youth's Opposition called for a reconciliation of an apparent conflict among Sections 8 and 16 of Republic Act No. 7941, the COMELEC resolutions implementing the law, and jurisprudence on the people's right to information with respect to party-list nominees.[35] Indeed, the Court has repeatedly ruled that when a case involves "the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon,"[36] the dispute is "*essentially judicial*."[37]

The Opposition of DUTERTE Youth having raised a controversy requiring the COMELEC's exercise of its quasi-judicial powers, it should have first decided the matter through one of its divisions, pursuant to the clear mandate of Article IX-C, Section 3 of the Constitution, which provides:

> **Sec. 3.** The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions

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[34] *Ponencia*, p. 16.
[35] J. M. V. Lopez, Concurring and Dissenting Opinion, p. 3.
[36] *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp.*, 775 Phil. 239, 259 (2015) [Per J. Perlas-Bernabe, First Division], *citing Gonzales v. Climax Mining Ltd.*, 492 Phil. 682, 695 (2005) [Per J. Tinga, Second Division].
[37] *Id.*

> for reconsideration of decisions shall be decided by the Commission *en banc*.

In a long line of jurisprudence, the Court has settled that "election cases" in Section 3 above refers only to quasi-judicial cases, as opposed to administrative matters which the COMELEC *en banc* can take cognizance of at the first instance.[38]

COMELEC, in failing to first refer the matter to its division, effectively resolved the Opposition without observing the basic tenets of due process. In *Aggabao v. COMELEC*,[39] the Court ruled that even in the absence of an express provision in the COMELEC's rules of procedure allowing for the referral of cases from the *en banc* to a division, the adherence to the due process requisites of notice and hearing—which it is mandated to observe when it is exercising its quasi-judicial powers—requires it to nevertheless make such referral so that the division can conduct the necessary hearing and decide on the case accordingly, thus:

> Again, as correctly pointed out by Justice Caguioa, the COMELEC *En Banc* had, in several instances, referred matters to its Divisions for hearing. The COMELEC, therefore, should have similarly referred the administrative matter in this case to a Division and docketed the same as an election case, heard the parties thereon, and thereafter resolved the material issue as to who between Ayson and Navarro, and subsequently Aggabao was the real mayoralty candidate of Partido Reporma. That the COMELEC rules may be silent on how these conflicting CONAS and the disavowals of the concerned political party may be resolved did not justify its inaction. **All it needed to do was adhere to the due process requisites of notice and hearing attendant to every adjudication it does in the exercise of its quasi-judicial functions. In *Engle v. COMELEC*, we held that in the exercise of its quasi-judicial functions, the COMELEC is mandated to hear and decide cases first by Division and, on motion for reconsideration, by the COMELEC *En Banc*.** The Court further stressed that the opinion of the COMELEC Law Department is not binding and at most, is merely recommendatory. The COMELEC *En Banc* cannot short cut proceedings by acting without prior action by a Division because this deprives the candidate of due process.[40] (Emphasis supplied)

Nonetheless, considering that the instant petition deals with pure questions of law, there is no longer any need to remand the same to the COMELEC Division. This is especially true due to the urgency and transcendental importance of the matter at issue with its substantial impact to the upcoming party-list elections in 2025.[41]

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[38] *See,* for example, *Municipal Board of Canvassers of Glan v. COMELEC,* 460 Phil. 426 (2003) [Per J. Azcuna, *En Banc*].

[39] G.R. No. 258456, July 26, 2022 [Per J. Lazaro-Javier, *En Banc*].

[40] *Id.*

[41] *Ponencia*, p. 13.

The voting requirement for quasi-judicial matters before COMELEC is a majority vote of all incumbent members

The *ponencia* refuses to pass upon the meaning of the phrase "majority vote of all its Members" in Article IX-A, Section 7 of the Constitution, which provides for the voting requirement for COMELEC to decide quasi-judicial cases, thus:

> SECTION 7. *Each Commission shall decide by a majority vote of all its Members* any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

Per the *ponente*, as the matter before COMELEC was administrative in nature, and not quasi-judicial, Section 7's mandate is not applicable.[42]

I differ.

As discussed, the issuance of the Third Assailed Resolution was done in the exercise of the COMELEC's quasi-judicial powers. As such, Section 7 is very much applicable, and it is incumbent upon the Court to decide whether the same was observed in the COMELEC's decision. This is put in issue because the Third Assailed Resolution was signed only by three commissioners when the COMELEC *en banc* has seven seats. In other words, the question is whether the three signatures constitute a "majority vote of all its Members" as required in the Constitution.

On the issue of what constitutes "majority vote of all [of the COMELEC's] Members," *Dumayas, Jr. v. COMELEC*[43] is instructive. There, the Court rejected the attempt to nullify a COMELEC resolution that was issued with a vote of only 3 to 1 for not being able to meet the constitutional threshold because "majority of all its Members" was being suggested to mean majority of all seven seats reserved for Members in all cases. The Court rejected such theory and ruled that the basis of the majority should be the *incumbent* Members when the case was decided. Thus, the Court ruled:

> In the present case, with the cancellation of the votes of retired Commissioners Gorospe and Guiani, *the remaining votes among the four incumbent commissioners at the time of the resolution's promulgation would still be 3 to 1 in favor of respondent. Noteworthy, these remaining*

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[42] *Id.* at 28–29.

[43] 409 Phil. 407 (2001) [Per J. Quisumbing, *En Banc*].

> *Commissioners still constituted a quorum.* In our view, the defect cited by petitioner does not affect the substance or validity of respondent Commission's disposition of the controversy. The nullification of the challenged resolution, in our view, would merely prolong the proceedings unnecessarily.[44] (Emphasis supplied)

Similar to *Dumayas*, in the present case, as confirmed by COMELEC through the Office of the Solicitor General, COMELEC only had four sitting Members when the Third Assailed Resolution was issued. Thus, pursuant to *Dumayas*, these four incumbent Members should be the basis of the majority requirement, and not the seven seats reserved for a fully-occupied COMELEC *en banc*. The three commissioners who voted for the subject resolution's passage was therefore enough to meet the constitutional standard.[45]

The crux of the issue really is, does the word "Members" in the constitutional provision's required voting in quasi-judicial cases of "Majority of all its Members" refer to the seats in COMELEC or the persons who are, at any given time, actually occupying those seats? Put more simply, are the "Members" the seats or the persons occupying those seats?

Basic logic dictates that "Members" herein can only pertain to natural persons. Needless to say, legal abstracts as "seats" cannot actually cast votes nor even meet the qualifications or avoid the disqualifications or the limitations to the Members' powers which are all provided in Article IX-A of the Constitution.

It was ultra vires for COMELEC to set deadlines for substitution of party-list nominees

It is the duty of the Court to apply the law as it is worded.[46] This is the plain meaning rule, as expressed in the maxim *verba legis non est recedendum,* or from the words of a statute there should be no departure.[47] As elucidated in *Victoria v. COMELEC*:[48]

> Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim, *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. ...[49]

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[44] *Id.* at 418–419.
[45] 1987 Constitution, Art. IX-C, sec. 1.
[46] *Macalino v. Commission on Audit*, G.R. No. 253199, November 14, 2023 [Per J. Marquez, *En Banc*].
[47] *Globe-Mackay Cable and Radio Corp. v. National Labor Relations Commission*, 283 Phil. 649, 660 (1992) [Per J. Romero, *En Banc*].
[48] 299 Phil. 263 (1994) [Per J. Quiason, *En Banc*].
[49] *Id.* at 268, *citing Globe-Mackay Cable and Radio Corp. v. National Labor Relations Commission, supra.*

Here, a plain reading of Section 8 of Republic Act No. 7941 reveals that while it sets a deadline for the submission of the list of nominees of party-lists—not later than 45 days before the election—there is no such deadline in the exceptional cases of death, withdrawal in writing, or incapacity of a nominee wherein a change of names is allowed in the list submitted. Equally absent is any authority given to COMELEC to set such a deadline:

> **Section 8.** *Nomination of Party-List Representatives*. Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.
>
> A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. **No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list.** Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned. (Emphasis supplied)

Despite the foregoing, COMELEC Resolution No. 9366, as amended by COMELEC Resolution No. 10690, imposes two distinct deadlines for substitution of party-list nominees on account of: (i) withdrawal in writing, i.e., November 15, 2021;[50] and (ii) death or incapacity, i.e., mid-day of the day of the election.[51]

As observed by the *ponencia,* even COMELEC itself admitted to altering the language of Republic Act No. 7941, *viz.*: "its own Resolution No. 9366 modifies Sections 8 and 16 of [Republic Act No. 7941] by adding restrictions on when a party-list can substitute its nominees after its deadline, thus overriding substantive law."[52]

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[50] Section 6. *Withdrawal and Substitution Due to Withdrawal of Nomination.*—...
"Section 4. *Withdrawal of nomination or acceptance of nomination.* Withdrawal of nominations and **substitution of nominees due to the *withdrawal of the acceptance to the nomination*** shall be in writing and under oath, and filed with the Law Department **not later than *NOVEMBER 15, 2021*.** ..." (Emphasis supplied)

[51] Section 7. *Substitution Due to Death or Incapacity of the Substituted Nominees.*—...
"Section 5. Nomination of Party-List representatives. ...
NO substitution shall be VALID beyond the deadline provided in the preceding section unless the list of nominees originally submitted has been exhausted due to death and/or incapacity of the nominees. ... Provided that **substitutions due to the *death and/or incapacity* of the nominees under this paragraph shall be allowed only up to *mid-day of election day*.**
...." (Emphasis supplied)

[52] *Ponencia*, p. 26.

Notably, the *ponencia* acknowledges the case of *Federico v. COMELEC*,[53] which upheld the COMELEC's imposition of deadlines for the filing of the Certificates of Candidacy (CoCs) for the 2010 National and Local Elections, including those of substitute candidates, to facilitate the conduct of the first National and Local Elections using an Automated Election System (AES).[54] In *Federico*, the Court upheld the COMELEC's power to impose substitution deadlines, heavily relying on another statute—Republic Act No. 9369[55] or the Election Automation Law of 2007—which mandates COMELEC to set deadlines for the filing of CoCs, petitions for registration and manifestations to participate in the election, for the purpose of prescribing the format of the electronic display and/or the size and form of the official ballot.[56]

Unfortunately, *Federico* and Section 13 of Republic Act No. 9369 do not apply in the present case because the express purpose for which COMELEC was given the authority to set election deadlines—to facilitate the fixing of the ballot's final format or "face" for purposes of printing of such ballots—does not obtain in the case of substitutions in the nominees of party-lists.

To recall, in *Federico*, Renato M. Federico (Federico) was a substitute **mayoralty** candidate whose proclamation was annulled on account of his invalid substitution of the original mayoralty candidate. In particular, Federico's substitute CoC and Certificate of Nomination and Acceptance (CONA) from his political party were filed on May 5, 2010 or beyond the December 14, 2009 deadline imposed by COMELEC. Federico, on petition for *certiorari* before the Court, argued that a COMELEC resolution cannot prevail over Section 77 of the Omnibus Election Code which allows for substitution until mid-day of election day. The Court rejected Federico's position and held that COMELEC is empowered by law to prescribe such deadlines "so as to make efficacious and successful the conduct of the first national automated election."[57] As mentioned, the Court relied on Section 13 of Republic Act No. 9369 which expressly granted COMELEC the power to "set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election," thus:

> Under [Section 13 of R.A. No. 9369], "the [COMELEC], which has the constitutional mandate to enforce and administer all laws and regulations relative to the conduct of an election," has been empowered to set the dates for certain pre-election proceedings. In the exercise of such constitutional and legislated power, especially to safeguard and improve on the [AES], [COMELEC] came out with Resolution No. 8678.

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[53] 702 Phil. 68 (2013) [Per J. Mendoza, *En Banc*].
[54] *Ponencia*, p. 26.
[55] Amending Republic Act No. 8436, approved on January 23, 2007.
[56] *See* Republic Act No. 9369, sec. 13, amending Republic Act No. 8436, sec. 11.
[57] *Federico v. COMELEC*, *supra*, at 83.

> **As automated elections had been mandated by law, there was a need for the early printing of the ballots.** ***So that all candidates would be accommodated in the ballots, the early filing of COCs was necessary.*** **If there would be late filing and approval of COCs, the names of aspiring candidates would not be included in the ballot**, the only document to be read by the Precinct Count Optical Scan (PCOS) machines.[58] (Citations omitted; emphasis supplied)

Section 13 of Republic Act No. 9369 provides for an amended Section 11, now Section 15, of Republic Act No. 8436. The amended provision now reads:

> SEC. 15. *Official Ballot.* - **The Commission shall prescribe the format of the electronic display and/or the size and form of the official ballot, which shall contain the titles of the position to be filled** and/or the proposition to be voted upon in an initiative, referendum or plebiscite. Where practicable, **electronic displays must be constructed to present the names of all candidates** for the same position in the same page or screen, otherwise, the electronic displays must be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot. **Under each position to be filled, the names of candidates** shall be arranged alphabetically by surname and uniformly indicated using the same type size. The maiden or married name shall be listed in the official ballot, as preferred by the female candidate. Under each proposition to be vote upon, the choices should be uniformly indicated using the same font and size.
>
> A **fixed space where the chairman of the board of election inspector shall affix his/her signature to authenticate the official ballot shall be provided.**
>
> ***For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election.*** ...
>
> ....
>
> **With respect to a paper-based election system, the official ballots shall be printed**[.]
>
> ....
>
> **The official ballots shall be printed and distributed to each city/municipality** at the rate of one ballot for every registered voter with a provision of additional three ballots per precinct. (Emphasis supplied)

Thus, as held in *Federico*, the law categorically declares the limited purpose for which the power of COMELEC to set the deadlines therein stated is granted—to facilitate the duties of COMELEC laid down in Section 13 of

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[58] *Id.* at 85.

Republic Act No. 9369 with respect to finalizing the ballot's face for printing towards ensuring that all candidates are included in the printed ballots.

This begs the question—what matters are included in the ballot so that non-submission thereof will prevent the finalization of the ballot's face and the printing of the final paper ballots?

Based on Section 13 above, the matters required to be included on the face of the ballot, both on the electronic display and the printed ballot, are: (1) the titles of the positions to be filled up; (2) the names of the candidates; and (3) a fixed space for the signature of the Chairperson of the Board of Election Inspectors. Thus, these information need to be submitted to COMELEC before it can finalize the format or face of the ballot before printing. For this purpose, COMELEC not only has the power but the duty to set deadlines to acquire such information. Specifically for the purpose of ensuring that item "(2)" above are included in the final print out of the ballots, COMELEC must set deadlines for the submission of such names of candidates.

On this note, it is well to emphasize that in the case of individual candidates, regardless if he or she belongs to a political party or group, their names are submitted to COMELEC in the form of a CoC. However, for juridical persons who are candidates in the elections, i.e., party-list groups and organizations, the manner in which they submit their names is via a petition for registration and/or manifestation of intent to participate in the party-list system of elections.

This is why Section 13 authorizes COMELEC to set deadlines specifically on the filing of CoCs, petitions to register, and manifestations of intent to participate.

None of these documents are involved in the case of substitute nominees of party-list groups. To stress, what individual nominees of party-list groups file with COMELEC are not CONAs.[59] For substitute nominees, the submission of their CONAs presupposes that the party-list group or organization had already previously filed with COMELEC a petition for registration and/or manifestation of intent to participate.[60]

Indeed, there is no point in setting deadlines for the submission of the names of nominees of party-lists ***because they are not required to be, nor are they actually, included in the electronic ballot face nor the final printed and official ballots***. Only the names of the party-lists which nominated them appear on the ballots. Again, this is exactly why COMELEC is empowered to set deadlines only for the filing of CoCs, petitions for registration and/or manifestations of intent to participate in the elections. These are the documents that COMELEC needs to be able to complete the requirements of

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[59] *See* COMELEC Resolution No. 10690, sec. 6.

[60] *Id. See* also COMELEC Resolution No. 10690, sections 2 and 3.

Section 13 on the matters that must be reflected in the official ballots. While the *ponencia* does not rely on *Federico* to uphold the deadlines on party-list nominee substitution, the above scrutiny of *Federico* and Republic Act No. 9369 reveals the operational distinctions between casting votes for individual candidates and party-lists, and highlights why Congress excludes CONAs from those documents which COMELEC can set deadlines for filing.

To stress, as opposed to other election candidates, including political party candidates, the names of the nominees of party-list groups are not printed in the official ballots. Rather, only the name of the party-list which nominated them appears therein. The portion of the official ballots for the election of party-list organizations, even those conducted using an AES, does not require the names of the party-list nominees. ***The reason behind this is that the electorate votes for a party-list group.*** This much is clear in the very language of Republic Act No. 7941:

> 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, organizations, or coalition* he wants represented in the [H]ouse of Representatives**[.] (Emphasis supplied)

This distinction between representatives of legislative districts and party-list representatives is given emphasis in the congressional deliberations of Republic Act No. 7941 by its primary author, Atty. Michael O. Mastura:

> [REP.] MASTURA: ...
>
> In the case of the constituency representatives, they are individuals, they are persons who stand and who run for a seat and who are voted upon. But let me repeat, **under the party-list system, *only the party will be voted by the individual voter*. That is the real distinctive feature.**[61] (Emphasis supplied)

All told, the purpose for which COMELEC can set deadlines—to facilitate the printing of the ballots—does ***not*** obtain in the case of party-list substitutions of nominees. Moreover, the documents the submission of which COMELEC can set deadlines for—CoCs, petitions for registrations and/or manifestations of intent to participate in the elections—are not required to be submitted in the case of such substitutions. ***This leads to no other conclusion than that the deadlines set by COMELEC for party-lists to substitute its nominees in case any of them dies, withdraws in writing, or becomes incapacitated, are ultra vires and thus, void.***

Indeed, the legislative intent seems to be that no deadlines should be imposed on party-lists to field their nominees via substitution in the instances that such substitution is allowed.

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[61] Record of the Deliberations of the House of Representatives, 4th Regular Session (1994–1995), December 5, 1994, p. 52.

This is evident from a scrutiny of the counterpart provision of Section 8 of Republic Act No. 7941 in the Omnibus Election Code with respect to substitution of political party candidates. Section 77 of the Omnibus Election Code, in stark contrast to Section 8 of Republic Act No. 7941, expressly provides that in the event of the substitution of an official candidate of a registered or accredited political party on account of death, withdrawal, or disqualification, the substitute candidate's CoC must be filed by mid-day of the election day, *viz.*:

> Sec. 77. **Candidates in case of death, disqualification or withdrawal of another.**—If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party **dies, withdraws or is disqualified for any cause**, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. **The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections *not later than mid-day of the day of the election.*** If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission. (Emphasis supplied)

To repeat, there is no such deadline set in the party-list law for substitution of party-list nominees.

Moreover, reading Section 8 in harmony with Section 16 of Republic Act No. 7941 on filling of vacancies reveals the legislative intent to ensure that elected party-lists will always have nominees to occupy their allotted seats in Congress, and corollary thereto, put forward additional nominees in case of withdrawal, death, or incapacity at any time even after the list has been submitted to COMELEC. To recall, Section 16 of Republic Act No. 7941 reads:

> Section 16. *Vacancy*. In case of vacancy in the seats reserved for party-list representatives, the vacancy shall be automatically filled by the next representative from the list of nominees in the order submitted to the COMELEC by the same party, organization, or coalition, who shall serve for the unexpired term. **If the list is exhausted, the party, organization, or coalition concerned shall submit additional nominees.** (Emphasis supplied)

As aptly observed in the *ponencia*, a denial of P3PWD's substitution of nominees does not leave the party-list without recourse as Section 16 mandates the submission of additional nominees upon exhaustion of the list of nominees during the term of a party-list representative.[62]

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[62] *Ponencia*, p. 32.

However, the *ponencia* makes a peculiar distinction as to the effect of Sections 8 and 16.

I agree with the *ponencia*'s interpretation that Section 8 applies to changes in the names of nominees before a party-list has secured a seat in Congress while Section 16 applies to submission of additional nominees to fill a "vacancy" in a party-list seat or starting noon of June 30—the start of the term of the elected representatives.[63] However, I disagree that the determination of whether a situation is covered under Section 8 or 16 would effectively alter the right of a party-list to field nominees, in that: (i) if the case is under Section 8, COMELEC deadlines shall apply and no changes in the list of nominees is allowed from such deadline until noon of June 30; and (ii) from noon of June 30, Section 16 will apply and additional nominees may already be submitted upon exhaustion of the list.[64]

To my mind, Sections 8 and 16 cannot be interpreted in isolation of each other. Creating such a distinction between Sections 8 and 16 leads only to a strange void—that between the deadline set by COMELEC for substitution of party-list nominees and noon of June 30, a party-list is without recourse in the event that any, or all of its nominees become indisposed to represent the party-list. This obscure timeframe—where the very exercise of the party-list's representation is temporarily suspended—does not find any basis in logic or law.

In fact, a review of the congressional deliberations on Republic Act No. 7941 enlightens as to how the provisions which allow for the submission of additional nominees were introduced in the law. Representatives Alfredo Amor Abueg, Jr. and Edcel Lagman discussed the issue of whether exceptional circumstances should warrant a change in the name of the nominees submitted to COMELEC:

> MR. LAGMAN. And again on Section 5, on the nomination of party-list representatives, I don't see any provision here which prohibits or for that matter allows the nominating party to change the nominees or to alter the order of prioritization of names of nominees. Is the implication correct that at any time after submission the names could still be changed or the order of listing altered, Your Honor?
>
> MR. ABUEG. That is a good issue, Mr. Speaker, brought out by the distinguished Gentleman from Albay and perhaps a perfecting amendment may be introduced therein and the sponsoring committee will gladly consider the same.
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> MR. LAGMAN. In other words, what I would like to see, Your Honor, is that after the list is submitted to the COMELEC officially, no more changes should be made, not in the names, not in the order of listing.

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[63] *Id.* at 20–22.
[64] *Id.* at 20–22 and 32.

> MR. ABUEG. Well, if Your Honor please, **there may be a situation wherein which the name of a particular nominee has been submitted to the Commission on Elections but before election day the nominee changed his political party affiliation and then the nominee is therefore *no longer qualified to be included in the party list and the political party has a perfect right to change the name of that nominee who have* [*sic*] *changed his political party affiliation*.**
>
> MR. LAGMAN. Yes of course. **In that particular case, the change can be effected but that will be the exception rather than the rule. *Another exception most probably is if the nominee listed dies*, then there has to be a change** but any change for that matter should always be at the last part of the list so that the prioritization made by the party will not be adversely affected.
>
> MR. ABUEG. Your Honor, the sponsoring committee will gladly consider the suggestion.[65] (Emphasis supplied)

From the foregoing, it is clear that Congress acknowledged specific instances where a party-list has "the **perfect right** to change the name of the nominee."[66] While Congress initially proposed that the names of the nominees shall be fixed, it admitted that exceptional circumstances may impair the capacity of a party-list to have a full list of representatives through no fault of its own—thus, the inclusion of the exceptions and procedures embodied in Sections 8 and 16.

Clearly, the intent of the legislature is for a party-list to always have nominees who will be able to represent it. Such intent is but an affirmation of the policy behind the party-list system of representation—to enable marginalized and under-represented sectors, organizations, and parties to contribute to the formulation and enactment of legislation as members of the HoR.[67] Indeed this policy is defeated if a party-list—a juridical entity who can only act through its representatives—is barred for even a specific window of time from designating natural persons to act on its behalf.

Moreover, this underscores the very distinction between the party-list and the district system of representation, in that in the former, it is the interest, cause or advocacy that is being represented while in the latter, it is the constituents of the area which comprise the district. In much the same way that a district cannot be deprived of a representative—which is why the law mandates the replacement of district representatives who fail in representing the district, i.e., fill up vacant seats in district representative offices via special elections,[68] the death, incapacity or withdrawal of a party-list representative should allow for a mode of filling the vacant seat left because otherwise, the interest, cause, or advocacy being advanced by the party-list is defeated. The

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[65] Record of the Deliberations of the House of Representatives, 3rd Regular Session (1994–1995), Volume III, November 22, 1994, pp. 117–118.
[66] *Id.*
[67] Republic Act No. 7941, sec. 2.
[68] *See* 1987 Constitution, Article VI, sec. 9.

mode to fill-up such vacant party-list seat is through substitution of the nominee who departed.

Instead of interpreting Sections 8 and 16 as creating a window where the party-list's right to field a nominee which can articulate the interest that the party-list represents, it is my considered submission that the distinction between these two provisions is as to the causes by which substitution is permissible.

As stated in *Lokin, Jr. v. COMELEC*,[69] Section 8 provides for three exclusive grounds when a party-list may be allowed to substitute its nominees, i.e., when a nominee: (a) dies; (b) withdraws in writing his or her nomination; or (c) becomes incapacitated.

Meanwhile, and as observed in the *ponencia*, the HoR Rules defines when there is considered a vacancy in a congressional seat, allowing for the operation of Section 16, i.e., when a Member: (a) dies; (b) resigns; (c) is permanently incapacitated; (d) is lawfully barred from performing the duties of a Member; or (e) is lawfully removed from office.[70]

Additionally, under Section 8, each instance of death, incapacity, or nominee withdrawal allows for the assignment of a substitute nominee who shall be placed last in the list. Meanwhile, under Section 16, the submission of additional nominees is permitted only upon the exhaustion of the list of nominees submitted to COMELEC.

With these substantial distinctions apparent in the language of Republic Act No. 7941, I submit that rather than formulating a few days when a party-list is completely constrained from substituting its nominees, the importance of determining whether Section 8 or 16 applies should only be to identify the applicable grounds and the procedure through which a party-list may exercise its right to substitute, as expressly granted under these two provisions of Republic Act No. 7941.

Having discussed that under both the principles of *verba legis* and *ratio legis*, there is neither instruction nor intent for COMELEC to set deadlines for the withdrawal and substitution of nominees, I staunchly submit that it was *ultra vires* for it to impose such deadlines and effectively curb the remedies afforded party-lists under Republic Act No. 7941. In promulgating Sections 6 and 7 of COMELEC Resolution No. 10690, COMELEC contradicted the law it seeks to implement, Republic Act No. 7941, which allows substitution at any time, provided the procedures set forth in the law are observed.

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[69] 635 Phil. 372 (2010) [Per J. Bersamin, *En Banc*].
[70] *Ponencia*, p. 22.

In *Atty. Calleja v. Executive Secretary Medialdea*,[71] the Court reiterated that the COMELEC's rule-making power is neither warrant nor cause for COMELEC to issue rules and regulations beyond the law it ought to implement:

> **The COMELEC, despite its role as the implementing arm of the Government in the enforcement and administration of all laws and regulations relative to the conduct of an election, has neither the authority nor the license to expand, extend, or add anything to the law it seeks to implement thereby.** The IRRs the COMELEC issues for that purpose should always accord with the law to be implemented, and should not override, supplant, or modify the law. It is basic that the IRRs should remain consistent with the law they intend to carry out.
>
> Indeed, administrative IRRs adopted by a particular department of the Government under legislative authority must be in harmony with the provisions of the law, and should be for the sole purpose of carrying the law's general provisions into effect. The law itself cannot be expanded by such IRRs, because an administrative agency cannot amend an act of Congress.[72] (Emphasis supplied)

In the present case, the act of disallowing substitution due to withdrawal after November 15, 2022 and allowing substitution on account of death or incapacity only until mid-day of election day runs afoul of the clear language and intent of Republic Act No. 7941 and therefore, must be considered void.

Submission of additional party-list nominees does not impair the electorate's right to information on matters of public concern

The COMELEC's quasi-legislative powers cannot contradict the law that it seeks to implement even if the same is in the guise of protecting a supposed voter's right.

Indeed, in several cases, as cited in the *ponencia*, the Court has stated that the publication of the list of the party-list nominees serves the right of the people to information on matters of public concern: it enables the electorate to make intelligent and informed choices.[73] Following this premise, the *ponencia* deems that the timing of the substitution is likewise a substantive requirement as it affects the publication of the list of nominees prior to the elections.[74]

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[71] 918-B Phil. 1 (2021) [Per J. Carandang, *En Banc*].

[72] J. Caguioa, Concurring and Dissenting Opinion in *Atty. Calleja v. Executive Secretary Medialdea*, *id.* at 968, *citing Lokin, Jr. v. COMELEC*, *supra* note 69, at 411.

[73] *Ponencia*, pp. 24–25.

[74] *Id.*

However, against the backdrop of the unequivocal text of Republic Act No. 7941, the records reflecting the legislative intent on the matter of substitution, and the election procedure with respect to party-lists which all point to allowing party-lists to submit additional nominees at any time for specific grounds, I respectfully object to, and accordingly disagree with the interpretation of the publication requirement of party-list nominees vis-à-vis the constitutional right of the people to information on matters of public concern.

It is my position that the "matter of public concern" in the case of publishing nominees' names does not pertain to facilitating the people's free and intelligent casting of votes for a party-list, but rather, enabling the electorate to challenge the qualifications and eligibility of individuals who may occupy a seat in Congress under the party-list system.

For one, the contention that COMELEC is justified in setting a deadline for the substitution of party-list nominees because of the electorate's right to know who they are casting their votes for before the election day is belied by the clear language of Section 16 of Republic Act No. 7941 which allows the submission of a list of new nominees in the event that the original list is exhausted during the term where a party-list has won seat/s in Congress. To recall, the provision reads:

> Section 16. *Vacancy*. In case of vacancy in the seats reserved for party-list representatives, the vacancy shall be automatically filled by the next representative from the list of nominees in the order submitted to the COMELEC ... who shall serve for the unexpired term. If the list is exhausted, the party, organization coalition concerned shall submit additional nominees.

As discussed in the *ponencia*, Section 16's reference to a "vacancy" and "unexpired term" demonstrates that the provision refers to a situation where a seat legally exists and the term of the representative has already begun, i.e., after the elections.[75] Obviously, then, whenever Section 16 is put into operation, the new nominees in the list would not have been known by the voters when they cast their votes—and yet, the law allows the submission of such additional nominees.

For another, and as discussed above, it is the party-list who is voted for and appears in the official ballots. That only a party-list's name appears in the ballot is not a mere procedural matter. Rather, it is the embodiment of the key policy behind the party-list system—that groups representing the marginalized and under-represented sectors, and those who lack well-defined political constituencies, be empowered to compete for and win seats in the legislature.[76]

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[75] *Id.* at 21–22.

[76] Republic Act No. 7941, sec. 2.

It is not even the party-lists groups *per se* that are sought to be accorded agency by our party-list system of representation. As mentioned, it is the causes embodied by each of these groups that are what the Constitution protects and advances. Both the party-list and its nominees are merely vessels through which specific needs and interests of the marginalized and under-represented sectors of our nation are sought to be championed in Congress. This principle is astutely summarized by former Senior Associate Justice Estela M. Perlas-Bernabe in her Concurring Opinion in *ANGKLA v. COMELEC*,[77] citing the constitutional deliberations on the inclusion of the party-list system provisions:

> Being based on "functional" rather than "territorial" representation, a party-list election is, at its core, "cause-centric" and not "person-centric" as in a traditional election. Although a party, being a juridical entity, can only conduct its business through natural persons (called nominees), in a party-list election, people actually vote for a particular cause, which is then advocated by the party-list through its nominee in Congress. The "cause-centric" nature of a party-list election is amply reflected in the constitutional deliberations as follows:
>
> > MR. MONSOD: **What the voters will vote on is the party**, whether it is UNIDO, Christian Democrats, BAYAN, KMU or Federation of Free Farmers, not the individuals. When these parties register with the COMELEC, they would simultaneously submit a list of the people who would sit in case they win the required number of votes in the order in which they place them. ...
> >
> > **But as far as the voters are concerned, they would be voting for party list or organizations, not for individuals.**
> >
> > ....
> >
> > MR. TADEO: Para sa marginalized sector, *kung saan kaisa ang magbubukid, ang* Sections 5 *at* 31 *ang pinakamahalaga dito. Sinasabi namin na hindi na mahalaga kung ang porma ng pamahalaan ay* presidential *o* parliamentary; *ang pinakamahalaga ay ang* "substance."
> >
> > ....
> >
> > ... *Ibig naming mula doon sa* politics of personality *ay pumunta tayo sa* politics of issue. *Ano ang ibig naming sabihin? Kaming* marginalized sector *pag bumoboto, ang pinagpipilian lang namin sa* two-party system *ay ang lesser evil. Ngunit pag pumasok na kami dito, ang Section 5 ang pinakamahalaga sa amin. **Ang bobotohan namin ay ang katangian ng aming organisasyon. Ang bobotohan namin ay ang issue at ang*** platform ***naming dinadala at hindi na iyang lesser evil o ang tinatawag nating*** "personality." ***Para***

[77] 884 Phil. 333 (2020) [Per J. Lazaro-Javier, *En Banc*].

> ***sa amin ito ay napakahalaga***.[78] (Citations omitted; emphasis in the original)

Accordingly, a vote under the party-list system is a vote for the cause that the party advocates and advances—*not* the individuals who may merely act for such party-list in Congress. Thus, the electorate's knowledge of the particular nominees should not be deemed to affect their capacity to make an intelligent and informed choice as for which party-list they will cast their ballot. Again, the people vote neither for a person or a party-list *per se*—they vote for a cause. As long as they are aware of the cause represented by the party-list they cast their votes for—and this knowledge is presumed as voters are presumed to be casting their votes intelligently—the policy behind the party-list system of representation is not lost.

To stress, I acknowledge and uphold the right of the people to information on matters of public concern as embodied in Article III, Section 7 of the Constitution. Indeed, the Court has recognized that COMELEC is empowered to promulgate such rules and resolutions "aimed at providing the electorate with the basic information to make **an informed choice about a candidate's *eligibility* and *fitness for office***."[79] The publication requirement for substitute party-list nominees serves such purpose: for the public to be apprised of any individual that intends to represent a party-list, and to have the opportunity to challenge should such individual suffer from any disqualification or ineligibility under the Constitution or relevant laws.

Notably, this purpose is not constrained to the timeline prior to the election day—each and every person who intends to occupy an elective seat, including substitute party-list nominees, must be subject to the scrutiny of the people as to their qualifications and eligibility to hold office.

This function of the publication requirement is bolstered by COMELEC Resolution No. 9366 which likewise requires the publication of a new list of nominees submitted *after the elections* by virtue of Section 16 of Republic Act No. 7941. Notably, the same resolution also reproduces Section 16 verbatim, *viz.*:

> RULE 4
> PARTY-LIST NOMINEES
>
> ....
>
> SEC. 6. **Vacancy**. In case of vacancy in the seats reserved for party-list representatives, the vacancy shall be automatically filled by the next representative from the list of nominees in the order submitted to the COMELEC by the same party, organization, or coalition, who shall serve for the unexpired term. If the list is exhausted, the party, organization coalition concerned shall submit additional nominees.

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[78] J. Perlas-Bernabe, Separate Concurring Opinion in *ANGKLA v. COMELEC*, *id.* at 427–428.
[79] *Velasco v. COMELEC*, 595 Phil. 1172, 1195 (2008) [Per J. Brion, *En Banc*]. (Emphasis supplied)

....

> SEC. 8. **Publication**. The Education and Information Department shall cause the immediate publication of the list of nominees in two (2) national newspaper of general circulation.

Obviously, then, the publication of the names of a party-list's nominees is not intended to allow the electorate "to make an intelligent and informed choice come election day"[80] as publication is mandatory even after the elections.

Notably, the *ponencia* interprets this recognition of the publication requirement—while at the same time invalidating the imposition of substitution deadlines for being *ultra vires*—as resulting in a "double standard."[81] Particularly, it was raised during the deliberations of this case that since requiring the publication of nominees' names and imposing deadlines for substitution are *both* not expressly provided for in Republic Act No. 7941, *both* should either be rejected for being *ultra vires* or adopted as a valid exercise of the COMELEC's duty to promulgate the necessary rules and regulations to carry out the purposes of Republic Act No. 7941.[82]

I respectfully disagree. The impression of a double standard only arises if it were submitted that COMELEC's setting of substitution deadlines is *ultra vires* solely based on the absence of an express language in Republic Act No. 7941. However, this is not the case. As extensively discussed in the preceding section, the imposition of substitution deadlines is an *ultra vires* act—not merely for lack of express sanction under the law, but rather—because it: (1) renders absurd Section 16 of Republic Act No. 7941; (2) finds no basis even in subsequent legislation allowing for automated elections; (3) is expressly withheld by Congress when juxtaposed with the Omnibus Election Code; (4) fails to recognize the operational distinctions between casting votes for individual candidates and party-lists; and (5) runs afoul of the clear intent of the legislature for a party-list to always have natural persons to represent it, as evidenced by the congressional records.

For avoidance of doubt, I concur that COMELEC's issuances requiring the publication of the names of party-list nominees are valid, as it upholds the people's right to make an informed choice about a candidate's eligibility and fitness for office.[83] On the other hand, the imposition of substitution deadlines cannot be interpreted as a valid furtherance of Republic Act No. 7941's purposes, as it, to my mind, and contrary to the finding of the *ponencia*, indeed does "violence to the words and intent of [the law]."[84]

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[80] *Ponencia*, p. 24.
[81] *Id.* at 27–28.
[82] *Id.* at 26–27.
[83] J. Perlas-Bernabe, Separate Concurring Opinion in *ANGKLA v. COMELEC*, *supra* note 77.
[84] *Ponencia*, p. 27.

As the deadline for substitution is void, there is no legal basis to find that COMELEC committed grave abuse of discretion in approving the substitution of P3PWD's nominees

The *ponencia* finds that COMELEC committed grave abuse of discretion in approving P3PWD's post-election substitution of nominees, relying on the following instances: (i) the COMELEC's disregard of its own deadline under COMELEC Resolution No. 10690 "on what appears to be a blind adherence to the recommendation of its Law Department";[85] (ii) the speed at which COMELEC resolved the substitution of P3PWD's nominees, i.e., one day from P3PWD's physical filing;[86] (iii) the pre-approval of the new list of nominees pending compliance with the publication requirement;[87] and (iv) the fact that the matter involves a former COMELEC commissioner, and that the COMELEC's liberal application of relevant rules was "not done in another instance."[88]

Meanwhile, Senior Associate Justice Marvic M.V.F. Leonen points to a perceived conflict of interest, citing Section 7 of Republic Act No. 6713,[89] considering that Guanzon "paved the way" for P3PWD to become a registered party-list during her incumbency as a COMELEC Commissioner, and emphasizing the timeline at which Guanzon became a member and substitute nominee of P3PWD.[90] Further, it is noted that majority of the nominees whose names were published, withdrew for unspecified reasons after P3PWD was proclaimed as a winning party-list.[91]

Respectfully, all the above circumstances, do not lead to a conclusion that there is whimsicality or capriciousness in the actions of COMELEC.

For one, the fact that Guanzon is a former COMELEC Commissioner does not *ipso facto* lead to a conclusion that such former position influenced the decision-making of COMELEC, resulting in the constitutional body to act with grave abuse of discretion. To be sure, ***there is no evidence on record that the involvement of Guanzon affected how COMELEC resolved the substitution of P3PWD's nominees and DUTERTE Youth's Opposition.***

For another, any perceived leniency that COMELEC afforded P3PWD was not proven to have been withheld from any other party-list. In fact, what the records reveal is that other party-lists had likewise had their substitution of nominees approved pending the publication of its revised list of nominees,

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[85] *Id.* at 30.
[86] *Id.*
[87] *Id.* at 32.
[88] *Id.*
[89] Code of Conduct and Ethical Standards for Public Officials and Employees, approved on February 20, 1989.
[90] S.A.J. Leonen, Concurring and Dissenting Opinion, p. 22.
[91] *Id.* at 10.

including that of petitioner DUTERTE Youth itself in COMELEC Minute Resolution No. 19-0568 dated May 14, 2019.[92] In the said Resolution, COMELEC simultaneously granted the withdrawals of all five nominees of DUTERTE Youth, gave due course to the nomination of the party-list's substitutes, and directed DUTERTE Youth to publish its Revised List of Nominees.[93] This refutes the finding that the "giving [of] short shrift to the publication requirement ... was not done in another instance."[94]

Moreover, neither COMELEC nor P3PWD should be faulted for the sudden consecutive withdrawals of the latter's nominees. As aptly recognized in the *ponencia*, Republic Act No. 7941 does not prohibit the withdrawal of a nominee whether before, during, or after the elections, and "COMELEC technically may neither deny nor grant a withdrawal but merely note the same."[95] To be sure, Republic Act No. 7941 provides no qualification, ground, or timeline within which a nominee may exercise his or her prerogative to withdraw; what Section 8 only requires is that such withdrawal be in writing.

Finally and most importantly, the "speed" at which COMELEC resolved the substitution of P3PWD's nominees and DUTERTE Youth's Opposition should not be taken against COMELEC so long as the same is within the period sanctioned by law[96] and its rules of procedure.[97]

Moreover, as held in *Ocate v. COMELEC*,[98] "COMELEC's conclusion on a matter decided within its competence is entitled to utmost respect. It is not sufficient to allege that ... COMELEC gravely abused its discretion. Such allegation should also be justified."[99] As such, "in the absence of substantial showing that [the COMELEC's] findings are made from an erroneous

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92 *Rollo*, pp. 271–272, COMELEC Minute Resolution No. 22-0810.

93 *Id.*

94 *Ponencia*, pp. 31–32.

95 *Id.* at 21.

96 Omnibus Election Code, sec. 52, the relevant portion of which reads:

> Sec. 52. Powers and functions of the Commission on Elections. –
>
> ....
>
> d. ...
>
> Any controversy submitted to the Commission shall, after compliance with the requirements of due process, be immediately heard and decided by it within sixty days from submission thereof. No decision or resolution shall be rendered by the Commission either *en banc* or by division unless taken up in a formal session properly convened for the purpose.

97 COMELEC Rules of Procedure, Rule 18, sections 7 and 8, which read:

> **Sec. 7. Period to Decide by the Commission En Banc.**—Any case or matter submitted to or heard by the Commission *en banc* shall be decided within thirty (30) days from the date it is seemed submitted for decision or resolution, except a motion for reconsideration of a decision or resolution of a Division in Special Actions and Special Cases which shall be decided within fifteen (15) days from the date the case or matter is deemed submitted for decision, unless otherwise provided by law.
>
> **Sec. 8. Period to Decide by a Division.**—Any case or matter heard by a Division shall be decided within ten (10) days from the date it is deemed submitted for decision or resolution, except in Special Actions and Special Cases which shall be decided or resolved within five (5) days from the date they are deemed submitted for decision or resolution, unless otherwise provided by law.

98 537 Phil. 584 (2006) [Per J. Carpio, *En Banc*].

99 *Id.* at 595.

estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed."[100]

In these lights, I caution the Court against ascribing grave abuse of discretion to an independent constitutional body, in an instance such as the one before us, on the basis of circumstantial evidence, suspicions, and suppositions—and where there is utterly no clear factual or legal grounds on which to firmly anchor the same.

There is no legal basis for the Court to enjoin the renomination of the same set of nominees subject of this case

The *ponencia* enjoins P3PWD from renominating the nominees whose substitutions are assailed in the Substitution Petition, relying on the doctrine that "what cannot be legally done directly cannot be done indirectly."[101]

Again, I disagree.

For one, as discussed above, the COMELEC's imposition of a deadline on the substitution of party-list nominees is *ultra vires*.

Moreover, even assuming that the deadlines imposed under Sections 6 and 7 of COMELEC Resolution No. 10690 are valid, the same should invalidate the substitution but cannot not, in any reasonable sense, operate as to disqualify the individual personalities that were nominated from being nominees in a subsequent substitution that is, as ruled by *ponencia,* now timely because it already falls under Section 16, i.e., the odd window of time in which P3PWD cannot substitute had already passed. That the deadlines—assuming *arguendo* they are valid—were not met does not constitute disqualifications attaching to the individual nominees. Thus, there is simply no basis in law to disallow P3PWD from re-nominating the same set of substitute nominees.

Even applying the doctrine that "what one cannot do directly, he or she cannot do indirectly" in this case, the COMELEC resolutions imposing deadlines only prohibit the filing of nominee withdrawals and substitutions beyond the prescribed periods. Assuming that the deadlines are valid, what party-lists may not do indirectly is to circumvent the *schedule* imposed by COMELEC. In no way can these COMELEC resolutions be read to directly or indirectly limit a party's choice of its nominees.

As expressly recognized in the *ponencia* itself, Section 16 of Republic Act No. 7941 even "mandates the submission of additional nominees upon exhaustion of the list of nominees during the term of the party-list

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[100] *Ejercito v. COMELEC*, 748 Phil. 205, 258 (2014) [Per J. Peralta, *En Banc*], *citing Juan v. COMELEC*, 550 Phil. 294, 303 (2007) [Per J. Nachura, *En Banc*].

[101] *Ponencia*, p. 32.

representative."[102] There is nothing that can be circumvented or bypassed where the law itself sanctions the submission of new nominees and *does not distinguish who such nominees should be*.

Further, following the rationale in *Federico*, allowing COMELEC to impose a deadline is only designed to facilitate the printing of ballots under the AES. As such, the mere failure to meet the deadline should not amount to a "disqualification" that attaches to the nominees who belatedly substituted the original ones such that the former are no longer permitted to be designated by the party-list as its nominees.

For another, as raised by Associate Justice Mario V. Lopez in the deliberations of this case, any grave abuse of discretion that may be ascribed to COMELEC cannot justify the Court's limitation in the choice of representation of P3PWD as a winning party-list in the 2022 National and Local Elections.

Finally, there is no ground for disqualification or ineligibility under the Constitution, Omnibus Election Code, or Republic Act No. 7941 ascribed to any of the individuals in P3PWD's list of substitute nominees. ***Barring them from being re-nominated is, in essence, disqualifying them from a seat in Congress on account of either a supposed late submission of substitution documents or an alleged grave abuse of discretion on the part of COMELEC—not even of bad faith on the part of P3PWD or the nominees themselves.*** In fine, there is completely no lawful basis to bar these individuals from representing their winning party-list in Congress.

To end, I am not unaware of the shortcomings of the party-list system of representation, and the abuses in which it has been mired over the years. Inasmuch as its objectives and wisdom are lofty and ideal, what had become practice and the way the relevant laws are implemented leave much to be desired in terms of achieving the objectives of the system—to afford the marginalized and underrepresented a real chance of representation in the Congress, and thus, a platform for them to advance their interests through legislation.

Unfortunately, judicial legislation is not the mode to address these ills, but, rather, legislative reform. The Court must maintain fidelity, not only to the duties and powers imposed upon it by the Constitution, but, just as importantly, to the limits thereof. Lest the balance in the powers of the government so arduously being maintained by the Law be tossed aside, exposing the People to infinitely more abuses.

The Court must only apply the law or construe it in the event of vagueness, the latter only for the sole purpose of advancing the intent behind the law. Thus, for example, the Court cannot disallow substitution of party-

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[102] *Id.*

list nominees on the basis of what it perceives to be abuses, if such perception has no basis at all in law. It cannot likewise effectively disqualify individuals from being nominated, if they are not suffering from a disqualification provided in law. As bitter a pill it is to swallow, especially in the context of such a widely-abused system as the party-list representation, the Court must restrain itself from altering the law even if, as in this case, it has the purest of intentions. Otherwise, it is sacrificing the far more consequential separation of powers under the Constitution.

ACCORDINGLY, I vote to **DENY** the Urgent Petition for *Certiorari* in G.R. No. 261123.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice