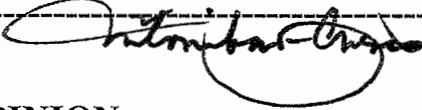


EN BANC

G.R. No. 268546 — AN WARAY PARTY-LIST, represented by FLORENCIO GABRIEL “BEM” NOEL and VICTORIA ISABEL NOEL, in her own personal capacity, Petitioners, v. COMMISSION ON ELECTIONS, DANILO T. PORNIAS, JR. and JUDE A. ACIDRE, Respondents.

Promulgated:  
August 6, 2024

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CONCURRING OPINION

LEONEN, J.:

I concur. The Commission on Elections (COMELEC), and not the House of Representatives Electoral Tribunal (HRET), has the jurisdiction to cancel An Waray’s registration as a party-list group. Thus, this Court should proceed to determine in a *certiorari* action whether COMELEC has not gravely abused its discretion.

As a democratic and republican State, sovereignty resides in our people and all government authority emanates from them.<sup>1</sup> With an aim to democratize political power, Articles VI and IX of the 1987 Constitution provide for the creation of party-list system and give the voter the right to elect two representatives in the House of Representatives: one for his or her legislative district and another for his or her party-list group,<sup>2</sup> thus:

Article VI

.....

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

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban

<sup>1</sup> CONSTI., art. II, sec. 1.

<sup>2</sup> *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 528 (2013) [Per J. Carpio, *En Banc*].



poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

....

## Article IX

....

### C. The Commission on Elections

SECTION 6. A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article.

SECTION 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

SECTION 8. Political parties, or organizations or coalitions registered under the party-list system, shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law.

As I mentioned in a Separate Opinion in *Atong Paglaum, Inc. v. Commission on Elections*,<sup>3</sup> the party-list system aims to assist genuine political parties to evolve to enable true representation that will help achieve a "democratic and republican state," hence:

The core principle that defines the relationship between our government and those that it governs is captured in the constitutional phrase that ours is a "democratic and republican state". A democratic and republican state is founded on effective representation. It is also founded on the idea that *it is the electorate's choices that must be given full consideration*. We must always be sensitive in our crafting of doctrines lest the guardians of our electoral system be empowered to silence those who wish to offer their representation. We cannot replace the needed experience of our people to mature as citizen in our electorate.<sup>4</sup> (Emphasis supplied, citation omitted)

Thus, there are clear differences between those elected from legislative districts and those elected through the party-list system:

There are two types of representatives in the House of Representatives. Those in the first group are "elected from legislative districts". Those in the second group are "elected through a party list system of registered national, regional and sectoral parties and organizations."

<sup>3</sup> See J. Leonen, Separate Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454 (2013) [Per J. Carpio, *En Banc*].

<sup>4</sup> *Id.* at 738.

The differences in terms of representation are clear.

Those who are elected from legislative districts will have their name in the ballot. They present their persons as the potential agent of their electorate. It is their individual qualifications that will be assessed by COMELEC on the basis of the Constitution and relevant statutes. Should there be disqualification it would be their personal circumstances, which will be reviewed, in the proper case, by the House of Representatives Electoral Tribunal (HRET). The individual representative can lose subsequent elections for various reasons, including dissatisfaction from those that initially elected him/her into office.

Incidentally, those who present themselves for election by legislative districts may or may not be supported by a registered political party. This may give them added political advantages in the electoral exercise, which includes the goodwill, reputation and resources of the major political party they affiliate with. However, it is not the nature of the political party that endorses them that is critical in assessing the qualifications or disqualifications of the candidate.

*The elected district representative in the House of Representative is directly accountable to his/her electorate.* The political party s/he affiliates with only shares that political accountability; but, only to a certain extent. Good performance is usually rewarded with subsequent election to another term. *It is the elected representative, not the political party that will get re-elected.* We can even take judicial notice that party affiliation may change in subsequent elections for various reasons, without any effect on the qualification of the elected representative.

The political party that affiliates those who participate in elections in legislative districts organize primarily to have their candidates win. These political parties have avowed principles and platforms of government. But, they will be known more through the personalities and popularity of their candidates. Often, compromises occur in the political party's philosophies in order to accommodate a viable candidate.

This has been the usual role of political parties even before the 1987 Constitution.

*The party list system is an attempt to introduce a new system of politics in our country, one where voters choose platforms and principles primarily and candidate-nominees secondarily.* As provided in the Constitution, the party list system's intentions are broader than simply to "ensure that those who are marginalized and represented become lawmakers themselves".

Historically, our electoral exercises privileged the popular and, perhaps, pedigreed individual candidate over platforms and political programs. Political parties were convenient amalgamation of electoral candidates from the national to the local level that gravitated towards a few of its leaders who could marshal the resources to supplement the electoral campaigns of their members. Most elections were choices between competing personalities often with very little discernible differences in their interpretation and solutions for contemporary issues. The electorate chose on the bases of personality and popularity; only after the candidates were elected to public offices will they later find out the



concrete political programs that the candidate will execute. Our history is replete with instances where the programs that were executed lacked cohesion on the basis of principle. In a sense, our electoral politics alienated and marginalized large parts of our population.

The party list system was introduced to challenge the status quo. It could not have been intended to enhance and further entrench the same system. *It is the party or the organization that is elected. It is the party list group that authorizes, hopefully through a democratic process, a priority list of its nominees. It is also the party list group that can delist or remove their nominees, and hence replace him or her, should he or she act inconsistently with the avowed principles and platforms of governance of their organization. In short, the party list system assists genuine political parties to evolve. Genuine political parties enable true representation, and hence, provide the potential for us to realize a "democratic and republican state".*<sup>5</sup> (Emphasis supplied, citations omitted)

The party-list system broadens electoral opportunities for groups whose interests and advocacies may not be represented within legislative districts to be represented in Congress:

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

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

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

Political ideologies have people with kindred ideas as their constituents. They may care for the marginalized and underrepresented, but they are not themselves — nor for their effectivity in the House of Representatives should we require that they can only come from that class.

Highlighting these groups in this opinion should not be mistaken as an endorsement of their platforms. Rather, it should be seen as clear

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<sup>5</sup> *Id.* at 739–741.



examples, where interests and advocacies, which may not be within the main focus of those who represent legislative districts, cry out for representation. Surely, it should be the electorate, not the COMELEC, which should decide whether their groups should participate in our legislative deliberations. That these groups could be excluded even before the vote is not what the party list system is all about.<sup>6</sup> (Citations omitted)

The collective representation by a party is intended by the sovereign to ensure not only that deliberative democracy is assured, but also that the debates within the House of Representatives contain the ideals, principles, and standpoints of those who are marginalized or follow specific ideologies. Reading constitutional text as applied to individual representatives of districts as if they presumptively apply to party-list representatives defeats this intent. We then might contribute to a decline in the intended inclusivity of our legislative chambers.

I understand that there are cases which have been decided in the past where the Court loosely defined “member of the House of Representatives” to mean the individual representative registered under the party-list system, and not merely the party itself. In my view, we should be clear to uphold the concept of the collective representation of a party, as opposed to the individual representation of a legislative district.

The jurisdiction of the COMELEC over the party-list system, and specifically in the registration and cancellation of a party as in this case, is clear in the Constitution and our laws. Article IX-C of the Constitution explicitly states:

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

- (1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

....

- (5) *Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government;* and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates

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<sup>6</sup> *Id.* at 743–744.

related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.<sup>7</sup> (Emphasis supplied)

The explicit authority granted by the Constitution to the COMELEC is further operationalized under Republic Act No. 7941 or the Party-List System Act. The Party-List System Act is replete with provisions reiterating the COMELEC's authority over party-list organizations. The definition in Section 3 of the party-list system specifically points that a party-list must be registered with the COMELEC:

SECTION 3. *Definition of Terms.* (a) The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions thereof *registered with the Commission on Elections (COMELEC)*. Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system.<sup>8</sup>

Thus, from the start, any party expressing its intent to participate in the party-list system should manifest its intention to the COMELEC:

SECTION 4. *Manifestation to Participate in the Party-List System.* Any party, organization, or coalition already registered with the Commission need not register anew. However, such party, organization, or coalition shall file with the Commission, not later than ninety (90) days before the election, a manifestation of its desire to participate in the party-list system.<sup>9</sup>

Without a doubt as it is clearly stated in the law, COMELEC is vested with authority to register or refuse registration and/or cancel the registration of the party-list group, thus:

SECTION 5. *Registration.* Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: Provided, That the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

<sup>7</sup> CONST., art. IX-C, sec. 2(1) and (5).

<sup>8</sup> Republic Act No. 7941 (1995), sec. 3(a).

<sup>9</sup> Republic Act No. 7941 (1995), sec. 4.

The COMELEC shall publish the petition in at least two (2) national newspapers of general circulation.

The COMELEC shall, after due notice and hearing, resolve the petition within fifteen (15) days from the date it was submitted for decision but in no case not later than sixty (60) days before election.

SECTION 6. *Refusal and/or Cancellation of Registration.* The COMELEC may, motu proprio or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

- (1) It is a religious sect or denomination, organization or association, organized for religious purposes;
- (2) It advocates violence or unlawful means to seek its goal;
- (3) It is a foreign party or organization;
- (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
- (5) It violates or fails to comply with laws, rules or regulations relating to elections;
- (6) It declares untruthful statements in its petition;
- (7) It has ceased to exist for at least one (1) year; or
- (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.<sup>10</sup>

COMELEC's authority even extends over the party-list's nominees:

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

<sup>10</sup> Republic Act No. 7941 (1995), secs. 5, 6.

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.<sup>11</sup>

Once a party-list group wins in an election, the COMELEC allocates seats for party-list representatives, and proclaims the representatives based on the list of names submitted by the party before they can sit in the House of Representatives:

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

SECTION 13. How Party-List Representatives are Chosen. Party-list representatives shall be proclaimed by the COMELEC based on the list of names submitted by the respective parties, organizations, or coalitions to the COMELEC according to their ranking in said list.<sup>12</sup>

These provisions demonstrate the far-reaching powers of the COMELEC as the government agency in charge of enforcing and administering election laws when it comes to the party-list system.

In *ABC Party List v. COMELEC*,<sup>13</sup> the Court held that the COMELEC had jurisdiction over the petition for cancellation of the registration and accreditation of ABC Party-List for alleged violation of Section 6(1) of Republic Act No. 7941.<sup>14</sup>

Thus, the COMELEC properly assumed jurisdiction in this case where the cancellation of registration of a party-list group, petitioner An Waray, is involved. Once jurisdiction is acquired, it is not lost,<sup>15</sup> even here involving COMELEC's jurisdiction. Any question relating to the COMELEC's actions comes to us on *certiorari*.<sup>16</sup>

<sup>11</sup> Republic Act No. 7941 (1995), sec. 8.

<sup>12</sup> Republic Act No. 7941 (1995), secs. 12, 13.

<sup>13</sup> 661 Phil. 452 (2011) [Per J. Peralta, *En Banc*].

<sup>14</sup> *Id.* at 454.

<sup>15</sup> *Amoguis v. Ballado*, 839 Phil. 1, 28 (2018) [Per J. Leonen, Third Division].

<sup>16</sup> CONST., art. IX-A, sec. 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.

The HRET has never been designed as an appellate body of the COMELEC. The HRET's jurisdiction is squarely defined by the constitutional provision that created it. Specifically, Article VI, Section 17 provides:

SECTION 17. 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.<sup>17</sup>

The HRET's jurisdiction is only limited to those enumerated in this provision and to situations it contemplates. The HRET only acts because of an objection to what transpires during an election. Article VI, Section 17 clearly provides that the HRET only acts on the "election, returns, and qualification" of members of the House. "Qualifications" here refers to issues raised concerning the member of the House of Representatives post-elections. For an existing party registered under the party-list system, this does not mean the validity of its registration with the COMELEC. Clearly, this case is not about the qualification of a sitting member; this case now is an appeal or a reconsideration of the actions of the COMELEC.

With due respect, if we endow the HRET with the power to determine whether the registration of a party under the party-list system is valid or whether it should be reviewed, we sanction an *ultra vires* act. We also change the balance of power between the COMELEC, the House of Representatives, and the HRET.

Even assuming that it is the individual nominated by a party-list—and not the party-list itself—that is a member of the House of Representatives, legal actions which result to the removal of a member is not within the exclusive jurisdiction of the HRET. For instance, the following are not within the discretion of the HRET: (a) any legal controversy relating to or arising from the removal and replacement of an individual representative based upon the decision of the party itself; (b) any legal controversy relating to or arising from the removal and/or replacement of an individual representative of a party registered with the party-list system based upon a disciplinary action made by the House of Representatives; and (c) any legal controversy relating to or arising from the cancellation of the registration of a party registered with the COMELEC under the party-list system, as in this case.

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<sup>17</sup> CONST., art. VI, sec. 17.

**ACCORDINGLY**, I vote to **DENY** the Petition.

A handwritten signature in black ink, consisting of several loops and flourishes, positioned above the printed name.

**MARVIC M.V.F. LEONEN**  
Senior Associate Justice