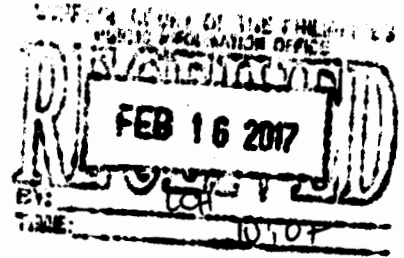**Republic of the Philippines**
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **FEBRUARY 7, 2017,** *which reads as follows:*

"**G.R. No. 225198** (*Gabriela Women's Party, represented by its National Chairperson, Hon. Emerenciana A. De Jesus vs. Commission on Elections*). – This is a Petition for *Certiorari*[1] under Rule 64, in relation to Rule 65, of the Rules of Court, which seeks to annul and set aside the National Board of Canvassers (NBOC) Resolution No. 008-16[2] dated May 19, 2016 issued by the Commission on Elections (COMELEC), sitting *en banc* as the NBOC for Senators and Party-List Representatives.

On May 9, 2016, the national and local elections, including the party-list elections, were held. Gabriela Women's Party (GABRIELA) was one of the candidates for the position of party-list representative. On May 19, 2016, the COMELEC *en banc*, sitting as the NBOC for Senators and Party-List Representatives, issued NBOC Resolution No. 008-16,[3] which declared the winning party-list groups in the party-list elections. The pertinent portion of NBOC Resolution No. 008-16 reads:

> **NOW THEREFORE,** by virtue of the powers vested in it under the 1987 Constitution, the Omnibus Election Code (Batas Pambansa Blg. 881), Republic Act Nos. 9369, 8436, 7166, 6646 and other election laws, and applying the rule in Banat vs. COMELEC (G.R. No. 179271, dated April 21, 2009), the [COMELEC] sitting *en banc* as the [NBOC] for Party-List **DECLARES** the following party-list groups as winners in the party-list elections of May 9, 2016, entitled to the total seat/s, as provided next to their respective names, to serve for a term of three (3) years, beginning noon of June 30, 2016, in accordance with Section 7, Article VI of the 1987 Constitution:

POLITICAL PARTY / COALITIONS / SECTORAL ORGANIZATIONS	ACRONYM	GRAND TOTAL	PERCENTAGE (%) OF TOTAL VOTES GARNERED	GUARAN-TEED SEATS	ADDI-TIONAL SEATS	TOTAL SEATS
Ako Bicol Political Party	AKO BICOL	1,664,975	5.1423	1	2	3

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[1] *Rollo*, pp. 3-22.
[2] Id. at 27-30.
[3] Id.

Gabriela Women's Party	GABRIELA	1,367,795	4.2245	1	1	2
One Patriotic Coalition of Marginalized Nationals	IPACMAN	1,310,197	4.0466	1	1	2
Act Teachers Party-List	ACT TEACHERS	1,180,752	3.6468	1	1	2
Coalition of Associations of Senior Citizens in the Philippines.	SENIOR CITIZENS	988,876	3.0542	1	1	2
Kabalikat ng Mamamayan	KABAYAN	840,393	2.5956	1	1	2
Agri-Agra na Reporma para sa Magsasaka ng Pilipinas Movement	AGRI	833,821	2.5753	1	1	2
Puwersa ng Bayaning Atleta	PBA	780,309	2.4100	1	1	2
Buhay Hayaan Yumabong	BUHAY	760,912	2.3501	1	1	2
Abono Party-List	ABONO	732,060	2.2610	1	1	2
Anak Mindanao Party-List	AMIN	706,689	2.1826	1	1	2
Cooperative Natcco Network Party	COOP-NATCCO	671,699	2.0746	1	1	2
Akbayan Citizens' Action Party	AKBAYAN	608,449	1.8792			1
Bayan Muna	BAYAN MUNA	606,566	1.8734			1
Agricultural Sector Alliance of the Philippines	AGAP	593,748	1.8338			1
An Waray	AN WARAY	590,895	1.8250			1
Citizens Battle Against Corruption	CIBAC	555,760	1.7165			1
Ang Asosasyon Sang Mangunguma Nga Bisaya Owa Mangunguma, Inc.	AAMBIS-OWA	495,483	1.5303			1
Advocacy for Social Empowerment and Nation Building Through Easing Poverty, Inc.	KALINGA	494,725	1.5280			1
Advocacy for Teacher Empowerment Through Action Cooperation and Harmony Towards Educational Reforms, Inc.	A TEACHER, INC.	475,488	1.4686			1
You Against Corruption and Poverty	YACAP	471,173	1.4552			1
Democratic Independent Workers Association, Inc.	DIWA	467,794	1.4448			1
Trade Union Congress Party	TUCP	467,275	1.4432			1
Abang Lingkod, Inc.	ABANG LINGKOD	466,701	1.4414			1
LPG Marketers Association, Inc.	LPGMA	466,103	1.4396			1
Alliance of Organizations, Networks and Associations of the Philippines, Inc.	ALONA	434,856	1.3431			1

Social Amelioration & Genuine Intervention on Poverty	1-SAGIP	397,064	1.2263			1
Butil Farmers Party	BUTIL	395,011	1.2200			1
Acts-Overseas Filipino Workers Coalition of Organizations	ACTS-OFW	374,601	1.1570			1
Anakpawis	ANAKPAWIS	367,376	1.1347			1
Ang Kabuhayan	ANG KABUHAYAN	348,533	1.0765			1
Angkla: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	337,245	1.0416			1
Ang Mata'y Alagaan	MATA	331,285	1.0232			1
1st Consumers Alliance for Rural Energy, Inc.	1-CARE	329,627	1.0181			1
Ang National Coalition of Indigenous Peoples Action Na!, Inc.	ANAC-IP	318,257	0.9829			1
Arts Business and Science Professionals	ABS	301,457	0.9311			1
Kabataan Party-List	KABATAAN	300,420	0.9279			1
Bagong Henerasyon	BH (Bagong Henerasyon)	299,381	0.9246			1
Ating Agapay Sentrong Samahan ng mga Obrero, Inc.	AASENSO	294,281	0.9089			I
Serbisyo sa Bayan Party	SBP	280,465	0.8662			1
Magdalo Para sa Pilipino	MAGDALO	279,356	0.8628			1
Una ang Edukasyon	1-ANG EDUKASYON	278,393	0.8598			1
Manila Teachers' Savings and Loan Association, Inc.	MANILA TEACHERS	268,613	0.8296			1
Kusug Tausug	KUSUG TAUSUG	247,487	0.7644			1
Aangat Tayo	AANGAT TAYO	243,266	0.7513			1
Agbiag! Timpuyog Ilocano, Inc.	AGBIAG!	240,273	0.7435			1
TOTAL						59

SO ORDERED.[4]

During the proclamation of the winning party-list groups, GABRIELA raised a point of clarification as regards the allocation of seats among the winning party-list groups. It claimed that it is entitled to two more seats in addition to their

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[4]   Id.

one guaranteed seat. The COMELEC brushed aside GABRIELA's manifestation and only declared a total of two seats for GABRIELA.[5]

On May 20, 2016, GABRIELA filed its Omnibus Motion for Reconsideration, Correction of Manifest Error and Proclamation of additional seat for GABRIELA with the COMELEC *en banc*.[6] It pointed out that considering that there are 238 seats available to legislative districts, using the formula for determining the seats available to party-list representatives laid down by the Court in *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*,[7] 59.5 seats are reserved for party-list representatives in the House of Representatives.[8]

GABRIELA further explained that in computing the number of additional seats to which each of the party-list groups who have obtained at least two percent of the total votes cast in the party-list elections, the percentage of the total votes they garnered should be multiplied by the remaining available seats, which is the difference between the total seats reserved and the guaranteed seats of the two percenters. Thereafter, GABRIELA averred that the whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats.[9]

GABRIELA's argument can be summed up as follows:

$$\frac{238 \ (\textit{No. of seats available for legislative districts})}{0.80} \quad \text{x} \quad 0.20 \quad = \quad 59.5$$

$$4.2245\% \ (\textit{GABRIELA's percentage of total votes garnered}) \quad \text{x} \quad 47.5 \ (\textit{59.5 less the 12 guaranteed seats of the two percenters}) \quad = \quad 2.0066375$$

Accordingly, GABRIELA claimed that it is entitled to two additional seats or a total of three party-list seats. It pointed out that the COMELEC, in computing the additional seat/s to which it is entitled, rounded down the number of reserved seats to party-list representatives from 59.5 to 59, thereby arriving at 1.985515 instead of 2.0066375. GABRIELA posited that COMELEC's mathematical inaccuracy deprived it of an additional seat.[10]

The NBOC Legal Group referred the said Omnibus Motion to the NBOC Supervisory Committee for appropriate action.[11]

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[5]   Id. at 11.
[6]   Id. at 31-40.
[7]   604 Phil. 131 (2009).
[8]   *Rollo*, p. 36.
[9]   Id.
[10]   Id. at 36-37.
[11]   Id. at 101.

On May 24, 2016, GABRIELA filed a Submission, which, *inter alia*, requested that its Omnibus Motion be set for hearing.[12] GABRIELA's request was likewise referred to the NBOC Supervisory Committee for appropriate action.[13]

On June 1, 2016, the NBOC Supervisory Committee recommended that GABRIELA's Omnibus Motion be denied for lack of merit.[14] It pointed out that GABRIELA's claim that the reserved seats for party-list representatives, for purposes of computing the additional seats, should be pegged at 59.5 and not 59 is misplaced since fractional seats should be disregarded.[15] It claimed that the COMELEC correctly applied the formula laid down by the Court in *BANAT*.[16]

On June 7, 2016, GABRIELA filed with the COMELEC *en banc* an Urgent Motion to Resolve its Omnibus Motion.[17] On July 11, 2016, while its Omnibus Motion was still pending before the COMELEC *en banc*, GABRIELA filed with this Court this petition for *certiorari*, claiming that the COMELEC gravely abused its discretion in declaring that it is only entitled to one additional seat.

On July 19, 2016, the COMELEC *en banc* issued Minute Resolution No. 16-0481, which adopted the NBOC Supervisory Committee's recommendation.[18] GABRIELA received a copy of COMELEC Minute Resolution No. 16-0481 on August 15, 2016.[19]

In support of this petition, GABRIELA maintains that it is entitled to two more seats in addition to its guaranteed seat. It claims that the COMELEC is not entitled to use its discretion in disregarding the 0.5 from the product of the computation for the determination of the 20% of party-list seats.[20]

Moreover, GABRIELA claims that the use of 60 allocated seats, instead of 59 as used by the COMELEC as basis for issuing NBOC Resolution No. 008-16, is more consistent with the policy declaration of Republic Act (R.A.) No. 7941.[21] It explains that, mathematically, 59 is 19.8653% while 60 is 20.1342%, and that both are 20% if rounded off. GABRIELA argues that fixing the reserved seats for party-list representatives at 60 favors broader participation.[22]

On the other hand, the COMELEC, in its Comment,[23] avers that the instant petition should be dismissed for utter lack of merit. It asserts that GABRIELA

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[12]   Id. at 45-46.
[13]   Id. at 81.
[14]   Id. at 104-111.
[15]   Id. at 106, 109.
[16]   Id. at 110-111.
[17]   Id. at 47-49.
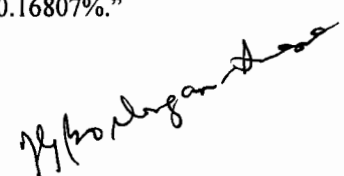[18]   Id. at 112-118.
[19]   Id. at 59-61.
[20]   Id. at 17.
[21]   Party-List System Act. Approved on March 3, 1995.
[22]   *Rollo*, p. 17. GABRIELA mistakenly wrote that "x x x 59 is 19.8319% while 60 is 20.16807%."
[23]   Id. at 78-100.

committed forum shopping when it filed this petition for *certiorari* despite the pendency of its motion for reconsideration with the COMELEC *en banc*.[24]

The COMELEC further alleges that it did not commit any abuse of discretion when it ruled that GABRIELA is only entitled to one seat in addition to its guaranteed seat.[25] It maintains that in computing the number of seats for party-list representatives in the 2016 elections, it correctly used the whole integer 59 instead of 59.5 since there are no fractional seats under R.A. No. 7941.[26] The COMELEC further alleges that to declare that there should be 60 party-list seats would contravene the first inviolable parameter of the Philippine party-list system, which provides that the total number of all party-list representatives shall not exceed 20% of the total membership of the House of Representatives.[27]

Ruling of the Court

The petition is dismissed on the ground of forum shopping.

"Forum shopping consists of the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment."[28] "There is forum shopping when as a result of an adverse decision in one (1) forum, or in anticipation thereof, a party seeks favorable opinion in another forum through means other than appeal or *certiorari*."[29] "It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets."[30]

To deter the pernicious practice of forum shopping, Section 5 of Rule 7 of the Rules of Court mandates that:

> Sec. 5. *Certification against forum shopping*. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause

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24   Id. at 84-87.
25   Id. at 87-88.
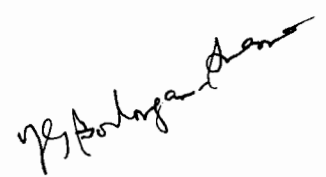26   Id. at 88-89.
27   Id. at 90.
28   *Lokin, Jr. v. COMELEC, et al.*, 635 Phil. 372, 389 (2010).
29   *Mayor Saludaga v. COMELEC, et al.*, 631 Phil. 653, 664 (2010).
30   *Young v. John Keng Seng*, 446 Phil. 823, 832 (2003).

for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

GABRIELA committed forum shopping when it filed this petition for *certiorari* with the Court despite the pendency of its Omnibus Motion with the COMELEC. In filing this petition without awaiting the resolution of its pending Omnibus Motion with the COMELEC, GABRIELA asked for simultaneous remedies in two different fora.[31] Indeed, the Omnibus Motion then pending with the COMELEC *en banc* and this petition for *certiorari* both seek the same relief, *i.e.* that NBOC Resolution No. 008-16 be reconsidered and corrected in order to reflect the correct number of seats that GABRIELA allegedly won.

"The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts."[32] GABRIELA abused the court processes when it filed this petition with the Court despite the pendency of its Omnibus Motion with the COMELEC *en banc*.

Worse, contrary to the directive of Section 5 of Rule 7 of the Rules of Court, GABRIELA did not even bother to state in its verification and certification of non-forum shopping the fact that its Omnibus Motion was then still pending before the COMELEC.[33]

GABRIELA's failure to comply with the rule against forum shopping alone constitutes a sufficient ground to dismiss this petition.[34] To avoid any confusion, the Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.[35]

However, the Court deems it proper to make the following observations which, although rendered unnecessary by the dismissal of this petition on account of GABRIELA's commission of forum shopping, should nevertheless be pointed out:

First, there are only 59 seats reserved for party-list representatives in the 2016 elections, not 60 as claimed by GABRIELA. Section 5(2) of Article VI of the

31   *See Disini v. Sandiganbayan, et al.,* 637 Phil. 351, 353 (2010); *Montes v. CA (Sixth Division),* 523 Phil. 98, 107 (2006).
32   *Spouses Arevalo v. Planters Development Bank, et al.,* 686 Phil. 236, 250 (2012).
33   *Rollo,* p. 22.
34   *See Santos v. COMELEC,* 515 Phil. 458, 465 (2006).
35   *Dy v. Mandy Commodities Co., Inc.,* 611 Phil. 74, 84 (2009).

1987 Constitution provides that "[t]he party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list." To compute the maximum number of seats available to party-list representatives, the Court has laid down the following formula in *Veterans Federation Party v. COMELEC*,[36] as affirmed by *BANAT*:

$$\frac{\text{Number of seats available to legislative districts}}{.80} \quad \text{x} \quad .20 \quad = \quad \text{Number of seats available to party-list representatives}$$

There are 238 seats for district representatives in 2016 elections. Applying the formula laid down by the Court in *Veterans* and *BANAT*, the product of 59.5 is obtained, *viz.*:

$$\frac{238}{.80} \quad \text{x} \quad .20 \quad = \quad 59.5$$

In determining the maximum number of seats reserved for party-list representatives, only the whole integer of 59 is considered. This is because what is being determined is the number of seats that can actually be allocated to the winning party-list groups and a fraction of a seat fails in this qualification since only a complete or undivided count guarantees the grant of a seat. Logic would dictate that a fraction of a seat cannot be properly allocated to the winning party-list groups.

The maximum number of seats available to party-list representatives cannot be pegged at 60 since it would violate the **first inviolable parameter of the Philippine-style party-list election** laid down by the Court in *Veterans* and *BANAT*, *i.e.* the combined number of *all* party-list congressmen **shall not exceed 20% of the total membership of the House of Representatives**, including those elected under the party list. If the maximum number of party-list seats would be fixed at 60, this would bring the total number of representatives to 298 and, accordingly, the percentage of party-list representatives would be equal to 20.1342%.

Admittedly, fixing the maximum number of reserved seats for party-list representatives to 59 would bring the total number of representatives to 297 and, in such case, the percentage of party-list representatives would only be equal to 19.8653%, which is less than the 20% constitutional threshold. Nevertheless, the Court has already determined that Section 5(2) of Article VI of the Constitution is not mandatory; it merely provides a ceiling for party-list seats in Congress.[37] The total number of party-list representatives cannot be more than 20% of the members of the House of Representatives.[38]

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[36] 396 Phil. 419 (2000).

[37] Id. at 438.

[38] *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*, supra note 7, at 170.

Second, it behooves the COMELEC, having the particular expertise as the agency charged with the enforcement and administration of all election laws, rules and regulations, to make an exhaustive re-examination of its computation on the allocation of seats among the winning party-list groups considering its far-reaching effects.

The allocation of seats to the winning party-list groups involves two rounds. The *first round* of seat allocation involves the grant of one guaranteed seat to each of the parties, organizations, and coalitions who have received at least two percent of the total votes cast for the party-list candidates after they have been ranked from highest to lowest based on the number of votes they each obtained.[39] In the 2016 elections, only 12 party-list groups have obtained at least two percent of the total votes cast for party-list candidates.[40] Thus, 47 available seats remain which would then be distributed in the second round of seat allocation.

The *second round* of seat allocation, in turn, involves two steps: *first*, the percentage of total votes garnered by the party-list group is multiplied by the remaining available seats, *i.e.* the difference between the maximum seats reserved for party-list representatives and the guaranteed seats of the two percenters. The whole integer of the product thereof corresponds to a party's share in the remaining available seats.[41] The first step of the second round of seat allocation can be summed up in the following formula:

Percentage of total votes garnered	x	(maximum seats reserved for party-list representatives *less* guaranteed seats of the two percenters)	=	whole integer of the product is the party's share in the remaining available seats

This case presented two versions on how the remaining available seats would be allocated in the *first step of the second round* of seat allocation. GABRIELA's version used the multiplicand 59.5, representing the reserved seats for party-list representatives in the 2016 elections. Using GABRIELA's version, the computation of the additional seat/s to which GABRIELA is entitled would be as follows:

$$4.2245\% \quad x \quad (59.5\text{-}12) \quad = \quad 2.0066375$$

If GABRIELA would be granted two additional seats, instead of only one as ruled by the COMELEC, 13 party-list seats would be allocated to 11 party-list groups[42] in the *first step of the second round* of seat allocation, leaving 34 seats to

[39]   Id. at 160.
[40]   The following party-list groups obtained at least two percent of the total votes cast for party-list candidates: (1) AKO BICOL; (2) GABRIELA; (3) 1PACMAN; (4) ACT TEACHERS; (5) SENIOR CITIZENS; (6) KABAYAN; (7) AGRI; (8) PBA; (9) BUHAY; (10) ABONO; (11) AMIN; and (12) COOP-NATCCO.
[41]   *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*, supra note 7, at 163.
[42]   AKO BICOL and GABRIELA would each receive two additional seats, while the following party-list groups would receive one additional seat each: (1) 1PACMAN; (2) ACT TEACHERS; (3) SENIOR CITIZENS; (4) KABAYAN; (5) AGRI; (6) PBA; (7) BUHAY; (8) ABONO: and (9) AMIN.

be distributed to the qualified party-list groups in the *second step of the second round* of seat allocation.

On the other hand, the COMELEC's version used 59 as the reserved seats for party-list representatives in the 2016 elections. Using the COMELEC's version, GABRIELA would only be entitled to one additional seat, *viz.*:

$$4.2245\% \quad x \quad (59-12) \quad = \quad 1.985515$$

Pursuant to the COMELEC's version, only 12 seats would be allocated to 11 party-list groups[43] in the *first step of the second round* of seat allocation, leaving 35 seats to be distributed to the qualified party-list groups in the *second step of the second round* of seat allocation.

Under the *second step of the second round* of seat allocation, one party-list seat to each of the parties next in rank is assigned until all available seats are completely distributed. The three-seat cap is then applied to determine the number of seats each qualified party-list groups are entitled to.[44]

Pursuant to GABRIELA's version, the remaining 34 seats would be distributed to the parties next in rank by assigning one seat to each of them, from Cooperative Natcco Network Party and so forth until the remaining seats are all distributed. However, since GABRIELA qualified for two additional seats, the last ranked party-list group, Agbiag! Timpuyog Ilocano, Inc., would necessarily lose its seat in the House of Representatives. Under the COMELEC's version, however, Agbiag! Timpuyog Ilocano, Inc., would still qualify for a seat in the House of Representatives since there are still 35 seats to be allocated in the *second step of the second round* of seat allocation.

Nevertheless, considering that the winning party-list groups have already been proclaimed by the COMELEC and their respective representatives have already assumed office, matters concerning the adjustment of seats granted to the qualified party-list groups, if any, should be brought to the House of Representatives Electoral Tribunal; the Court may not pass upon the same in this *certiorari* action.[45]

WHEREFORE, in consideration of the foregoing disquisitions, the petition is hereby **DISMISSED.** Velasco, Jr., Peralta and Del Castillo, JJ., no part.

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[43] AKO BICOL would still receive two additional seats, while GABRIELA, 1PACMAN, ACT TEACHERS, SENIOR CITIZENS, KABAYAN, AGRI, PBA, BUHAY, ABONO, and AMIN would receive one additional seat each.
[44] *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*, supra note 7, at 163.
[45] Section 17 of Article VI of the Constitution, in part, provides that: "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. x x x."

Caguioa, J., on leave. (adv46)

Very truly yours,

FELIPA B. ANAMA
Clerk of Court

*(With Separate Concurring Opinion of Justice Estela M. Perlas-Bernabe and
Separate Concurring Opinion of Justice Marvic Mario Victor F. Leonen)*