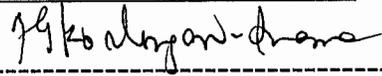


**G.R. No. 225198 – GABRIELA WOMEN’S PARTY, represented by its National Chairperson, HON. EMERENCIANA A. DE JESUS, Petitioner, v. COMMISSION ON ELECTIONS (COMELEC), Respondent.**

Promulgated:  
February 7, 2017



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### SEPARATE CONCURRING OPINION

**PERLAS-BERNABE, J.:**

I concur with the *ponencia*'s finding that petitioner Gabriela Women's Party's (GABRIELA) petition for *certiorari*<sup>1</sup> should be dismissed outright on the ground of forum shopping. As the *ponencia* holds, GABRIELA committed forum shopping when it filed the instant petition before the Court despite the pendency of its Omnibus Motion for Reconsideration<sup>2</sup> with respondent Commission on Elections (COMELEC) seeking the same relief – *i.e.*, the reconsideration and/or correction of NBOC Resolution No. 008-16<sup>3</sup> in order to increase GABRIELA's entitlement to party-list seats. Worse, GABRIELA did not even bother to disclose the pendency of said incident in the attached verification and certification of non-forum shopping. This blatant commission of forum shopping should not be countenanced; hence, the dismissal of the petition is warranted.<sup>4</sup>

As the petition has been dismissed solely on this ground, the Court is precluded from making a definitive pronouncement on the actual merits of this case. Therefore, the statements made by the *ponencia* on this score<sup>5</sup> partake of the nature of an *obiter dictum*, which thus, lacks binding force.<sup>6</sup>

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<sup>1</sup> *Rollo*, pp. 3-21.

<sup>2</sup> Correction of Manifest Error and Proclamation; *id.* at 31-38.

<sup>3</sup> Issued on May 19, 2016; *id.* at 27-30.

<sup>4</sup> See *ponencia*, pp. 6-7.

<sup>5</sup> See *id.* at 7-10.

<sup>6</sup> “An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*. (*Ocean East Agency, Corporation v. Lopez*, G.R. No. 194410, October 14, 2015, 772 SCRA 414, 428-429, citation omitted.)

All the more, the party-list representatives for the 2016 Elections had already been proclaimed, and now have assumed office. Hence, the adjustment of seats and the concomitant qualification and disqualification of representatives are matters that should be properly brought before the House of Representatives Electoral Tribunal, being the sole judge of all contests relating to the election, returns, and qualifications of its members.<sup>7</sup>

This notwithstanding, I offer my own observations on the substantive aspect of this case merely for the constructive guidance and considered reflection of the adjudicating tribunal when the proper case arises.

I.

The guidelines in allocating the seats available to party-list representatives were laid down in *Veterans Federation Party v. COMELEC (Veterans)*,<sup>8</sup> which were further refined in *Barangay Association for National Advancement and Transparency v. COMELEC (BANAT)*.<sup>9</sup> Based on these guidelines, the process for computation is as follows:

1. The **maximum number of available party list seats (APLS)**, which under Section 5 (2), Article VI of the 1987 Constitution “shall constitute **twenty per centum of the total number of representatives including those under the party list**,” shall be first determined. This is arrived at by using the following formula:

$$\begin{array}{rcc} \text{Number of Seats} & & \text{Number of} \\ \text{available to} & \times 0.20 = & \text{Seats Available} \\ \text{legislative districts} & & \text{to Party List} \\ 0.80 & & \text{Representatives} \\ & & \text{(or APLS)}^{10} \end{array}$$

2. Once the APLS is determined, the party-list candidates shall be **ranked from the highest to the lowest** based on the number of votes they garnered during the elections.<sup>11</sup>

3. The **percentage of votes that each party-list candidate** garnered shall then be ascertained by using the following formula:

<sup>7</sup> Section 17, Article VI, 1987 Constitution.

<sup>8</sup> 396 Phil. 419 (2000).

<sup>9</sup> 604 Phil. 131 (2009).

<sup>10</sup> See Section 5 (2), Article VI, 1987 Constitution.

<sup>11</sup> *BANAT*, supra note 9, at 158 and 162.

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$$\frac{\text{Number of votes garnered}}{\text{Total votes cast}} = \text{Percentage of votes garnered}^{12}$$

Upon this determination, all party-list candidates that garnered **at least two percent (2%) of the total votes cast (in other words, “the two percenters”) shall each be automatically entitled to one (1) seat.** This constitutes the **first round of allocation** of the available party-list seats. The total number of seats allotted to the “two percenters” (TP) shall then be noted for the next step.<sup>13</sup>

4. Any of the “two percenters” may then qualify for **additional seats** by using the following formula:

$$\begin{array}{r} \text{Percentage of} \\ \text{total votes} \\ \text{garnered} \end{array} \times (\text{APLS} - \text{TP}) = \begin{array}{r} \text{Additional Seat} \\ \text{for Party-List} \\ \text{Candidate}^{14} \end{array}$$

It should be noted, however, that should the foregoing application yield a product constituting fractional values (*e.g.*, 0.66, 1.87, 2.39), said product shall be **ROUNDED-DOWN** to the nearest whole integer as the prevailing laws and rules do not allow for fractional seats.<sup>15</sup>

Also, it should be noted that no party-list candidate shall be awarded more than two (2) additional seats, **since a party may only hold a maximum of three (3) seats.**<sup>16</sup>

5. If the APLS has not been fully exhausted by the first allocation of seats to the two percenters, including the allocation of additional seats under Step 4 above, then the **remaining seats shall then be allocated (one [1] seat each) to the parties next in rank,** *i.e.*, those “two percenters” that did not qualify for an additional seat pursuant to Step 4,<sup>17</sup> and thereafter, those who did not get at least two percent (2%) of the total number of votes cast, until all the available seats are completely distributed.<sup>18</sup>

In *BANAT*, Steps 4 and 5 constitute the **second round of allocation** of the available party-list seats. However, it is my view that Step 4, *i.e.*, the process of allocating additional seats to the “two percenters” should be

<sup>12</sup> See *id.* at 160.

<sup>13</sup> See *id.* at 160-161.

<sup>14</sup> See *id.* at 162-163.

<sup>15</sup> *Id.* at 163.

<sup>16</sup> See *id.*

<sup>17</sup> In *BANAT*, two-percenters that did not reach a whole integer of one in the application of Step 4 (*e.g.*, COOP-NATCCO with 0.9766, BUTIL with 0.9766, and BATAS with 0.9196) were given one (1) additional seat each, before the remainder of the available party-list seats were distributed to the non-two percenters by rank. (See *id.* at 163-165.)

<sup>18</sup> See *id.*

demarcated from Step 5, *i.e.*, the process of filling up the APLS by giving seats to the “two percenters” that did not qualify for additional seats under Step 4, and thereafter, to the “non-two percenters” next in rank until all the available seats are distributed, considering that Steps 4 and 5 each cover an allocation process distinct from the other. Hence, in the interest of conceptual integrity, there should be three (3) rounds of seat allocation, instead of two (2) as enunciated in *BANAT*:

A. The **first round of allocation** constitutes the distribution of guaranteed seats to the qualified two percenters.

B. The **second round of allocation** constitutes the distribution of additional seats in addition to the guaranteed seats of the qualified two percenters.

C. The **third round of allocation** constitutes the distribution of seats to the “two percenters” that failed to earn additional seats under the second round of allocation, and thereafter, the “non-two percenters” by rank until all available party-list seats are filled up.

## II.

In the case at bar, what is peculiar is that the application of Step 1 as indicated above, *i.e.*, the determination of the APLS, yielded a product containing a fractional value, as follows:

$$\frac{238}{0.80} \quad \times \quad .20 \quad = \quad 59.5$$

This is different from the factual circumstances in both *Veterans* and *BANAT*, wherein whole numbers were arrived at right after the preliminary application of Step 1 above (*i.e.*, 52 for *Veterans* and 55 for *BANAT*). As such, the Court, in those cases, did not have any opportunity to deliberate upon the consequences of arriving at fractional numbers after the application of Step 1. Fractional numbers were arrived at in *BANAT*, but only with respect to the allocation of additional seats to the “two percenters” of the 2007 Elections, which process already constitutes Step 4 above. Thus, it was held:

In computing the **additional seats**, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two-percenter. Thus, the remaining available seats for allocation as “additional seats” are the maximum seats reserved under the Party List System less the guaranteed seats. **Fractional seats are**

**disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats.**<sup>19</sup> (Emphases supplied)

Due to variance in milieu, the question of whether or not the rounding-off of the preliminary APLS figure is warranted under our laws is a novel issue, and is, in fact, the bone of contention of the parties before this Court.

The COMELEC's position is that the APLS figure arrived at this case, *i.e.*, 59.5, **should be ROUNDED-DOWN to the nearest whole integer, i.e., 59**, considering that to round-off the figure to 60 would bring the total number of representatives to 298. This would, in turn, increase the percentage of party-list representatives to 20.1342% of the entire membership of the House of Representatives and, as a consequence, violate the 20% ceiling laid down by Section 5 (2), Article VI of the 1987 Constitution. As remarked, there is simply no provision in our prevailing laws and rules on party-list elections allowing for a fractional seat.<sup>20</sup>

Thus, using the rounded-down figure of 59, GABRIELA would be entitled to: (a) one (1) guaranteed seat by virtue of getting at least two percent (2%) of the total votes cast in the party-list elections; and (b) only one (1) additional seat, since an application of the formula to determine entitlement to an additional seat yielded 1.985515,<sup>21</sup> which would then be rounded-down to the nearest whole integer, which is 1.

On the other hand, Associate Justice Marvic M.V.F. Leonen (Justice Leonen), in his Separate Concurring Opinion, sides with the position of GABRIELA that **the APLS figure of 59.5 should stay "as is"** when computing for the potential additional seats that a "two-percenter" such as GABRIELA should get, arguing that: (a) the quote in *BANAT*, wherein it was stated that "[f]ractional seats are disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats," was only in reference to fractional numbers yielded *after* the additional seats are computed (Step 4 above), and did not pertain to the fractional numbers yielded in computing for the APLS (Step 1 above);<sup>22</sup> (b) disregarding fractional numbers *only after* computing the additional seats provides a logical and mathematically sound interpretation to the formulas in *Veterans* and *BANAT*;<sup>23</sup> and (c) the process of retaining the APLS as it is provides for greater representation and participation of marginalized and underrepresented groups.<sup>24</sup> Thus, Justice Leonen concludes that GABRIELA should get two (2) additional seats instead of only one (1), since an application of the formula to determine entitlement to an additional seat

<sup>19</sup> *BANAT*, supra note 9, at 162-163.

<sup>20</sup> See *ponencia*, pp. 5-6.

<sup>21</sup>  $4.2245\% \times (59-12) = 1.985515$  (See *id.* at 10).

<sup>22</sup> See Justice Leonen's Separate Concurring Opinion, p. 3.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 11.

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yielded 2.006638,<sup>25</sup> which when rounded-down to the nearest whole integer, would be 2.

Further, Justice Leonen observes that giving another seat to GABRIELA would not push the total party-list seats to 60 and thus violate the 20% constitutional limit, considering that another party-list who got at least two percent (2%) of the total votes cast, namely, Cooperative Natcco Network Party (COOP-NATCCO), should not have been entitled to an additional seat, as the COMELEC computed. This is because, whether one applies the “rounded down APLS” of 59 (**0.975062**<sup>26</sup>) or the “as is” APLS of 59.5 (**0.985435**<sup>27</sup>), COOP-NATCCO would only gain a fractional additional seat which is less than 1. Hence, as per *BANAT*, the COMELEC should not have rounded up these figures so as to accord COOP-NATCCO an additional seat.

### III.

At the outset, I respectfully disagree with Justice Leonen’s finding that COOP-NATCCO should not have been entitled to an additional seat. While the application of Step 4 as described above to COOP-NATCCO’s case – regardless of the usage of “rounded-down” APLS of 59 or the “as is” APLS of 59.5 – would altogether yield a fractional figure less than 1, the subsequent application of Step 5 as described above will result in COOP-NATCCO getting an additional seat before all the other non-two percenters next in rank are given one (1) seat each until all available seats are fully exhausted. In other words, while COOP-NATCCO did not qualify for an additional seat under the application of Step 4 above, it is entitled to an additional seat pursuant to the filling up process under Step 5, in accordance with *BANAT*.

Further, I harbor certain reservations on Justice Leonen’s statement that maintaining the APLS figure “as is” at 59.5 – which means no rounding-off, either up or down – “not only fulfills the constitutional allocation **but also provides for greater representation and participation of marginalized and underrepresented groups.**”<sup>28</sup>

It should be emphasized that this Court’s eventual determination of the proper APLS to be used, whether “rounded-down” or “as is,” would, in effect, constitute a **definitive standard figure** to be applied in all future cases, and not only to this one. Each election carries with it distinct voting results and, thus, would entail the application of the various computation steps to distinct figures. Hence, I venture into a hypothesis of whether or not

<sup>25</sup>  $4.2245\% \times [59.5-12] = 2.0066375$  (See *id.* at 4).

<sup>26</sup>  $2.0746\% \times [59-12] = 0.975062$  (See *id.* at 9-10).

<sup>27</sup>  $2.0746\% \times [59.5-12] = 0.985435$  (See *id.*).

<sup>28</sup> *Id.* at 11; emphasis and underscoring supplied.

the “as is” APLS, if applied to varying facts, would truly yield a result that would indeed ensure greater representation and participation of marginalized and underrepresented groups. A presentation of the would-be winners under both the “rounded-off” or “as is” APLS systems would be key to this endeavor.

#### IV.

In the COMELEC’s NBOC Resolution No. 008-16 using the rounded down” APLS of 59, the winning party-lists were tabulated as follows:

POLITICAL PARTY/ COALITIONS/ SECTORAL ORGANIZATIONS	ACRONYM	GRAND TOTAL	PERCENT-AGE (%) OF TOTAL VOTES GARNERED	GUARAN-TEED SEATS (STEP 3)	VALUE FOR DETERMI-NATION OF ADDITIO-NAL SEATS (59)	ENTITL-EMENT TO ADDITIO-NAL SEATS (STEP 4)	DISTRIBU-TION OF REMAIN-ING SEATS (STEP 5)	TOTAL SEATS
Ako Bicol Political Party	AKO BIKOL	1,664,975	5.1423	1	2.416881	2		3
Gabriela Women’s Party	GABRIELA	1,367,795	4.2245	1	1.985515	1		2
One Patriotic Coalition of Marginalized Nationals	IPACMAN	1,310,197	4.0466	1	1.901902	1		2
Act Teachers Party-List	ACT TEACHERS	1,180,752	3.6468	1	1.713996	1		2
Coalition of Associations of Senior Citizens in the Philippines	SENIOR CITIZEN	988,876	3.0542	1	1.435474	1		2
Kabalikat ng Mamamayan	KABAYAN	840,393	2.5956	1	1.219932	1		2
Agri-Agra na Reporma para sa Magsasaka ng Pilipinas Movement	AGRI	833,821	2.5753	1	1.210391	1		2
Pwersa ng Bayaning Atleta	PBA	780,309	2.4100	1	1.1327	1		2
Buhay Hayaan Yumabong	BUHAY	760,912	2.3501	1	1.104547	1		2
Abono Party-List	ABONO	732,060	2.2610	1	1.06267	1		2
Anak Mindanao Party-List	AMIN	706,689	2.1826	1	1.027542	1		2
Cooperative Natcco Network Party	COOP-NATCCO	671,699	2.0746	1	0.975062		1	1
Akbayan Citizens’ Action Party	AKBAYAN	608,449	1.8792				1	1
Bayan Muna	BAYAN MUNA	606,566	1.8734				1	1
Agricultural Sector Alliance of the Philippines	AGAP	593,748	1.8338				1	1
An Waray	AN WARAY	590,895	1.8250				1	1
Citizens Battle Against Corruption	CIBAC	555,760	1.7165				1	1

Ang Asosasyon Sang Mangunguma Nga Bisaya Owa Mangunguma, Inc.	AAMBIS-OWA	495,783	1.5303				1	1
Advocacy for Social Empowerment and Nation Building Through Easing Poverty, Inc.	KALINGA	494,725	1.5280				1	1
Advocacy for Teacher Empowerment Through Action Cooperation and Harmony Towards Educational Reforms, Inc.	A TEACHER INC.	475,488	1.4686				1	1
You Against Corruption and Poverty	YACAP	471,173	1.4552				1	1
Democratic Independent Workers Association, Inc.	DIWA	467,794	1.4448				1	1
Trade Union Congress Party	TUCP	467,275	1.4432				1	1
Abang Lingkod, Inc.	ABANG LINGKOD	466,701	1.4414				1	1
LPG Marketers Association, Inc.	LPGMA	466,103	1.4396				1	1
Alliance of Organizations, Networks and Associations of the Phillipines, Inc.	ALONA	434,856	1.3431				1	1
Social Amelioration & Genuine Intervention on Poverty	I-SAGIP	397,064	1.2263				1	1
Butil Farmers Party	BUTIL	395,011	1.2200				1	1
Acts-Overseas Filipino Workers Coalition of Organizations	ACTS-OFW	374,601	1.1570				1	1
Anakpawis	ANAKPAWIS	367,376	1.1347				1	1
Ang Kabuhayan	ANG KABUHAYAN	348,533	1.0765				1	1
Angkla: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	337,245	1.0416				1	1
Ang Mata'y Alagaan	MATA	331,285	1.0232				1	1
1 <sup>st</sup> Consumers Alliance for Rural Energy, Inc.	1-CARE	329,627	1.0181				1	1

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Ang National Coalition of Indigenous Peoples Action Nat., Inc.	ANAC-IP	318,257	0.9829				1	1
Arts Business and Science Professionals	ABS	301,457	0.9311				1	1
Kabataan Party-List	KABATAAN	300,420	0.9279				1	1
Bagong Henerasyon	BH(Bagong Henerasyon)	299,381	0.9246				1	1
Ating Agapay Sentrong Samahan ng mga Obrero, Inc.	AASENSO	294,281	0.9089				1	1
Serbisyo sa Bayan Party	SBP	280,465	0.8662				1	1
Magdalo Para sa Pilipino	MAGDALO	279,356	0.8628				1	1
Una ang Edukasyon	1-ANG EDUKASYON	278,393	0.8595				1	1
Manila Teachers' Savings and Loan Association, Inc.	MANILA TEACHERS	268,613	0.8296				1	1
Kusug Tausug	KUSUG TAUSUG	247,487	0.7644				1	1
Aangat Tayo		243,266	0.7513				1	1
Agbiag! Timpuyog Ilocano, Inc.	AGBIAG!	240,723	0.7435				1	1
TOTAL								<u>59</u>

Accordingly, rounding-down the APLS to 59 would, *inter alia*: (a) entitle GABRIELA to only two (2) seats; and (b) overall, qualify a total of 46 different party-list candidates to at least one (1) seat each, with Ako Bicol Political Party (AKO BIKOL) being the highest-ranked qualifier and **Agbiag! Timpuyog Ilocano, Inc. (AGBIAG!) the lowest-ranked qualifier.**

Meanwhile, the following is the tabulation of party-list seats applying the “as is” APLS of 59.5, as espoused by Justice Leonen:

POLITICAL PARTY/ COALITIONS/ SECTORAL ORGANIZATIONS	ACRONYM	GRAND TOTAL	PERCENTAGE (% OF TOTAL VOTES GARNERED)	GUARANTEED SEATS (STEP 3)	VALUE FOR DETERMINATION OF ADDITIONAL SEATS (59.5)	ENTITLEMENT TO ADDITIONAL SEATS (STEP 4)	DISTRIBUTION OF REMAINING SEATS (STEP 5)	TOTAL SEATS
Ako Bicol Political Party	AKO BIKOL	1,664,975	5.1423	1	2.442593	2		3
Gabriela Women's Party	GABRIELA	1,367,795	4.2245	1	2.006638	2		3
One Patriotic Coalition of Marginalized Nationals	IPACMAN	1,310,197	4.0466	1	1.922135	1		2
Act Teachers Party-List	ACT TEACHERS	1,180,752	3.6468	1	1.73223	1		2

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Coalition of Associations of Senior Citizens in the Philippines	SENIOR CITIZEN	988,876	3.0542	1	1.450745	1		2
Kabalikat ng Mamamayan	KABAYAN	840,393	2.5956	1	1.23291	1		2
Agri-Agra na Reporma para sa Magsasaka ng Pilipinas Movement	AGRI	833,821	2.5753	1	1.223268	1		2
Pwersa ng Bayaning Atleta	PBA	780,309	2.4100	1	1.14475	1		2
Buhay Hayaan Yumabong	BUHAY	760,912	2.3501	1	1.116298	1		2
Abono Party-List	ABONO	732,060	2.2610	1	1.073975	1		2
Anak Mindanao Party-List	AMIN	706,689	2.1826	1	1.038474	1		2
Cooperative Natcco Network Party	COOP-NATCCO	671,699	2.0746	1	0.985435		1	1
Akbayan Citizens' Action Party	AKBAYAN	608,449	1.8792				1	1
Bayan Muna	BAYAN MUNA	606,566	1.8734				1	1
Agricultural Sector Alliance of the Philippines	AGAP	593,748	1.8338				1	1
An Waray	AN WARAY	590,895	1.8250				1	1
Citizens Battle Against Corruption	CIBAC	555,760	1.7165				1	1
Ang Asosasyon Sang Mangunguma Nga Bisaya Owa Mangunguma, Inc.	AAMBIS-OWA	495,783	1.5303				1	1
Advocacy for Social Empowerment and Nation Building Through Easing Poverty, Inc.	KALINGA	494,725	1.5280				1	1
Advocacy for Teacher Empowerment Through Action Cooperation and Harmony Towards Educational Reforms, Inc.	A TEACHER INC.	475,488	1.4686				1	1
You Against Corruption and Poverty	YACAP	471,173	1.4552				1	1
Democratic Independent Workers Association, Inc.	DIWA	467,794	1.4448				1	1
Trade Union Congress Party	TUCP	467,275	1.4432				1	1
Abang Lingkod, Inc.	ABANG LINGKOD	466,701	1.4414				1	1

LPG Marketers Association, Inc.	LPGMA	466,103	1.4396				1	1
Alliance of Organizations, Networks and Associations of the Philippines, Inc.	ALONA	434,856	1.3431				1	1
Social Amelioration & Genuine Intervention on Poverty	I-SAGIP	397,064	1.2263				1	1
Butil Farmers Party	BUTIL	395,011	1.2200				1	1
Acts-Overseas Filipino Workers Coalition of Organizations	ACTS-OFW	374,601	1.1570				1	1
Anakpawis	ANAKPAWIS	367,376	1.1347				1	1
Ang Kabuhayan	ANG KABUHAYAN	348,533	1.0765				1	1
Angkla: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	337,245	1.0416				1	1
Ang Mata'y Alagaan	MATA	331,285	1.0232				1	1
1 <sup>st</sup> Consumers Alliance for Rural Energy, Inc.	1-CARE	329,627	1.0181				1	1
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Bagong Henerasyon	BH(Bagong Henerasyon)	299,381	0.9246				1	1
Ating Agapay Sentrong Samahan ng mga Obrero, Inc.	AASENSO	294,281	0.9089				1	1
Serbisyo sa Bayan Party	SBP	280,465	0.8662				1	1
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Una ang Edukasyon	I-ANG EDUKASYON	278,393	0.8595				1	1
Manila Teachers' Savings and Loan Association, Inc.	MANILA TEACHERS	268,613	0.8296				1	1
Kusug Tausug	KUSUG TAUSUG	247,487	0.7644				1	1
Aangat Tayo		243,266	0.7513				1	1
Agbiag! Timpuyog Ilocano, Inc.	AGBIAG!	240,723	0.7435				1	1
TOTAL								<u>60</u>

As Justice Leonen pointed out, retaining the APLS at its fractional value of 59.5 would, *inter alia*, result in the increase of GABRIELA’s additional seats from 1 to 2 and thus, giving it a total of three (3) seats. Notably, however, the increase in the total number of seats awarded to GABRIELA would concomitantly result in the decrease of the seats to be distributed under Step 5 as described above. This is significant because the lowest-ranked qualified party-list in the “rounded-down” APLS scenario, *i.e.*, AGBIAG!, would no longer qualify under the “as is” APLS scenario, considering that retaining AGBIAG!’s qualification would result in the increase of the total party-list seats to 60, which would then breach the 20% ceiling prescribed by the Constitution. **In effect, under the “as is” APLS system, the total number of winning party-list candidates would decrease to 45, and thus, disqualifying the 46<sup>th</sup> party-list of a seat, *i.e.*, AGBIAG!, which it would have otherwise garnered under the “rounded down” APLS system.**

Overall therefore, it is my observation that, following the guidelines in *Veterans* and *BANAT*, an increase in the entitlement of additional seats for “two percenters” such as GABRIELA, would lead to a concomitant decrease in the total number of winning party-list candidates as there would be less seats to be distributed among the “non-two percenters.” When applied, the award of an additional seat to GABRIELA would effectively deprive AGBIAG! of a seat in the party-list elections, as the latter is the last-ranked party-list. This development would then decrease the total number of winning party-list candidates to only 45 from the original 46. **In my view, this effectively forms some sort of a concentration of power with certain party-lists that earned additional seats, at the expense of other party-lists – which presumably represents a marginalized group different from the other party-lists – that could have gotten a seat as well if only the former did not win additional seats.**

To reiterate, the formula used by *BANAT* in determining whether or not a party-list that successfully went over the two percent (2%) threshold is entitled to any additional seats is as follows:

$$\begin{array}{rcccl} \text{Percentage of} & & & & \text{Additional Seat} \\ \text{total votes} & \times & (\text{APLS} - \text{TP}) & = & \text{for Party-List} \\ \text{garnered} & & & & \text{Candidate} \end{array}$$

Under this formula, the percentage of total votes garnered is the multiplicand. On the other hand, the value derived from subtracting the TP from the APLS is the multiplier.

Following the basic principles of mathematics, a **higher multiplicand<sup>29</sup> or multiplier<sup>30</sup> would necessarily yield a higher product.<sup>31</sup>** Thus, if the APLS is rounded-down to the nearest whole integer (as the COMELEC held), it would result in a lower multiplier (*i.e.*,  $59 - 12 = 47$ ), which in turn would yield a lower product. On the other hand, leaving the APLS as is (as Justice Leonen advocates) would result in a higher multiplier (*i.e.*,  $59.5 - 12 = 47.5$ ) and, consequently, a higher product. In other words, it seems that if we opt to use a higher multiplier by leaving the APLS “as is” and without performing any rounding-down, the product – *i.e.*, the additional seat to be awarded to a “two percenter” – would be higher, and consequently, more likely to reach a whole number. This, in turn would translate to additional seats for the “two percenter.” On the contrary, if we opt to use a lower multiplier by rounding down the APLS, the product would be lower, and consequently, less likely to reach a whole number. This, in turn, would mean that while a “two percenter” may be denied an additional seat, such denial would open up a slot for a lower-ranked party-list to qualify for a seat.

Essentially, my findings can be summarized as follows:

**A.** If we leave the value of an APLS with a fractional value “as is,” then it is more likely for a “two percenter” to be entitled to additional seats. Thus, there will be lesser seats to be distributed among the “non-two percenters” lower in rank.

**B.** If we round-down an APLS with a fractional value to the nearest whole integer, it is less likely for a “two percenter” to be entitled to additional seats. Thus, there will be more seats to be distributed among the “non-two percenters” lower in rank.

**C.** A higher number of additional seats awarded to “two percenters” translates to a lower number of total winning party-list candidates, and thus, means lesser opportunities for “non-two percenters” lower in rank to qualify for a seat. Since party-list candidates represent diverse marginalized and underrepresented groups, it then appears that more groups may be heard through their representatives in Congress, when the additional seats of “two percenters” are reduced, under the application of the “rounded-down” regime.

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<sup>29</sup> “Multiplicand” is referred to as the number that is to be multiplied by another. <<https://www.merriam-webster.com/dictionary/multiplicand>> (visited February 6, 2017).

<sup>30</sup> “Multiplier” is referred to as the number by which another number is multiplied. <<https://www.merriam-webster.com/dictionary/multiplier>> (visited February 6, 2017).

<sup>31</sup> “Product” is referred to as the number or expression resulting from the multiplication together of two or more numbers or expressions. <<https://www.merriam-webster.com/dictionary/product>> (visited February 6, 2017).

Taking all of these into consideration, the following quandary arises: *Is the ideal of “greater representation and participation of marginalized and underrepresented groups” best subserved if (A) more party-lists qualify for seats in Congress or (B) if the two percenters are given more additional seats?* To my mind, a thorough and comprehensive discernment on this matter is integral in determining what APLS regime should be set as a standard when allocating party-list seats. However, as above-intimated, this standard can be definitively established by this Court only when the proper case arises. For now, the present petition is dismissed on the sole ground of forum shopping.

  
ESTELA M. PERLAS-BERNABE  
Associate Justice