BARANGAY ASSOCIATION FOR NATIONAL ADVANCEMENT AND TRANSPARENCY (BANAT), PETITIONER, VS. COMMISSION ON ELECTIONS (SITTING AS THE NATIONAL BOARD OF CANVASSERS), RESPONDENT. ARTS B...

G.R. No. 179271. July 08, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The House of Representatives, represented by Speaker Prospero C. Nograles, filed a motion for leave to intervene in G.R. Nos. 179271 and 179295. The House of Representatives filed a motion for clarification in intervention and enumerated the issues for clarification as follows:

> - There are only 219 legislative districts and not 220. Accordingly, the alloted seats for party-list representation should only be 54 and not 55. The House of Representatives seeks clarification on which of the party-list representatives shall be admitted to the Roll of Members considering that the Court declared as winners 55 party-list representatives.
>
> - The House of Representatives wishes to be guided on whether it should enroll in its Roll of Members the 32 named party-list representatives enumerated in Table 3 or only such number of representatives that would complete the 250 member maximum prescribed by Article VI, Sec. 5(1) of the Constitution. In the event that it is ordered to admit all 32, will this act not violate the above-cited Constitutional provision considering that the total members would now rise to 270.
>
> - The Court declared as unconstitutional the 2% threshold only in relation to the distribution of additional seats as found in the second clause of Section 11(b) of R.A. No. 7941. Yet, it distributed first seats to party-list groups which did not attain the minimum number of votes that will entitle them to one seat. Clarification is, therefore, sought whether the term "additional seats" refer to 2[nd] and 3[rd] seats only or all remaining available seats. Corollary thereto, the House of Representatives wishes to be clarified whether there is no more minimum vote requirement to qualify as a party-list representative.
>
> - For the guidance of the House of Representatives, clarification is sought as to whether the principle laid down in Veterans that "the filling up of the allowable seats for party-list representatives is not mandatory," has been abandoned.[1]

On the other hand, Armi Jane Roa-Borje (Roa-Borje), third nominee of Citizens' Battle Against Corruption (CIBAC), filed a motion for leave for partial reconsideration-in-intervention, alleging that:

> The Supreme Court, in ruling on the procedure for distribution of seats, has deprived without due process and in violation of the equal protection clause, parties with more significant constituencies, such as CIBAC, Gabriela and APEC, in favor of parties who did not even meet the 2% threshold.[2]

Following the Court's Decision of 21 April 2009, the Commission on Elections (COMELEC) submitted to this Court on 27 April 2009 National Board of Canvassers (NBC) Resolution No. 09-001. NBC Resolution No.

09-001 updated the data used by this Court in its Decision of 21 April 2009. The total votes for party-list is now 15,723,764 following the cancellation of the registration of party-list group Filipinos for Peace, Justice and Progress Movement (FPJPM). Moreover, the total number of legislative districts is now 219 following the annulment of Muslim Mindanao Autonomy Act No. 201 creating the province of Shariff Kabunsuan. Thus, the percentage and ranking of the actual winning party-list groups are different from Table 3 of the Decision in G.R. Nos. 179271 and 179295.

The Number of Members of the House of Representatives
in the 2007 Elections
Section 5(1), Article VI of the 1987 Constitution reads:

> 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. (Emphasis supplied)

The 1987 Constitution fixes the maximum number of members of the House of Representatives at 250. However, the 1987 Constitution expressly allows for an increase in the number of members of the House of Representatives provided a law is enacted for the purpose. This is clear from the phrase "unless otherwise provided by law" in Section 5(1), Article VI of the 1987 Constitution. The Legislature has the option to choose whether the increase in the number of members of the House of Representatives is done by piecemeal legislation or by enactment of a law authorizing a general increase. Legislation that makes piecemeal increases of the number of district representatives is no less valid than legislation that makes a general increase.

In 1987, there were only 200 legislative districts. Twenty legislative districts were added by piecemeal legislation after the ratification of the 1987 Constitution:

> Republic Act
>
> Year Signed into Law
>
> Legislative District
>
> 1 7160 1992 Biliran
>
> 2 7675 1994 Mandaluyong City
>
> 3 7854 1994 Makati (2[nd] District)
>
> 4 7878 1995 Apayao
>
> 5 7896 and 7897 1995 Guimaras
>
> 6 7926 1995 Muntinlupa City
>
> 7 8470 1998 Compostela Valley
>
> 8 8487 1998 Taguig City (2[nd] District)
>
> 9 8526 1998 Valenzuela City (2[nd] District)
>
> 10 9229 2003 Parañaque (2[nd] District)
>
> 11 9230 2003 San Jose del Monte City

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12 8508 and 9232 1998 and 2003 Antipolo (1[st] District)

13 9232 2003 Antipolo (2[nd] District)

14 9269 2004 Zamboanga City (2[nd] District)

15 9355 2006 Dinagat Island

16 9357 2006 Sultan Kudarat (2[nd] District)

17 9360 2006 Zamboanga Sibugay (2[nd] District)

18 9364 2006 Marikina City (2[nd] District)

19 9371 2007 Cagayan de Oro (2[nd] District)

20 9387 2007 Navotas City

Thus, for purposes of the 2007 elections, there were only 219 district representatives. Navotas City became a separate district on 24 June 2007, more than a month after the 14 May 2007 elections.

The Number of Party-List Seats
in the 2007 Elections
Section 5(2), Article VI of the 1987 Constitution reads in part:

> The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list. x x x

The 1987 Constitution fixes the ratio of party-list representatives to district representatives. This ratio automatically applies whenever the number of district representatives is increased by law. The mathematical formula for determining the number of seats available to party-list representatives is

Number of seats

x .20 =

Number of seats available to

available

party-list representatives.

to legislative

districts

.80

As we stated in our Decision of 21 April 2009, "[t]his formula allows for the corresponding increase in the number of seats available for party-list representatives whenever a legislative district is created by law." Thus, for every four district representatives, the 1987 Constitution mandates that there shall be one party-list representative. There is no need for legislation to create an additional party-list seat whenever four additional legislative districts are created by law. Section 5(2), Article VI of the 1987 Constitution automatically creates such additional party-list seat.

We use the table below to illustrate the relationship between the number of legislative districts and the number of

party-list seats for every election year after 1987.

Election Year	Number of Legislative Districts	Number of Party-List Seats	Total Number of Members of the House of Representatives
1992	200	50	250
1995	206	51	257
New Districts: Biliran Mandaluyong City Makati (2[nd] District) Apayao Guimaras Muntinlupa City			
1998	209	52	261
New Districts: Compostela Valley Taguig City (2[nd] District) Valenzuela City (2[nd] District)			
2001	209	52	261
2004	214	53	267
New Districts: Parañaque City (2[nd] District) San Jose del Monte City Antipolo (1[st] District) Antipolo (2[nd] District) Zamboanga City (2[nd] District)			
2007	219	54	

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New Districts: Dinagat Island Sultan Kudarat (2[nd] District) Zamboanga Sibugay (2[nd] District) Marikina City (2[nd] District) Cagayan de Oro (2[nd] District)

2010

220

55

275

New District: Navotas City (assuming no additional districts are created)

We see that, as early as the election year of 1995, the total number of members of the House of Representatives is already beyond the initial maximum of 250 members as fixed in the 1987 Constitution.

Any change in the number of legislative districts brings a corresponding change in the number of party-list seats. However, the increase in the number of members of the House of Representatives went unnoticed as the available seats for party-list representatives have never been filled up before. As of the oral arguments in G.R. Nos. 179271 and 179295, there were 220 legislative districts. Fifty-five party-list seats were thus allocated. However, the number of legislative districts was subsequently reduced to 219 with our ruling on 16 July 2008 declaring void the creation of the Province of Sharif Kabunsuan.[3] Thus, in the 2007 elections, the number of party-list seats available for distribution should be correspondingly reduced from 55 to 54.

The filling-up of all available party-list seats is not mandatory. Actual occupancy of the party-list seats depends on the number of participants in the party-list election. If only ten parties participated in the 2007 party-list election, then, despite the availability of 54 seats, the maximum possible number of occupied party-list seats would only be 30 because of the three-seat cap. In such a case, the three-seat cap prevents the mandatory allocation of all the 54 available seats.

Under Section 11(b) of R.A. No. 7941, garnering 2% of the total votes cast guarantees a party one seat. This 2% threshold for the first round of seat allocation does not violate any provision of the 1987 Constitution. Thus, the Court upholds this 2% threshold for the guaranteed seats as a valid exercise of legislative power.

In the second round allocation of additional seats, there is no minimum vote requirement to obtain a party-list seat because the Court has struck down the application of the 2% threshold in the allocation of additional seats. Specifically, the provision in Section 11(b) of the Party-List Act stating that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the proportion to their total number of votes" can no longer be given any effect. Otherwise, the 20 percent party-list seats in the total membership of the House of Representatives as provided in the 1987 Constitution will mathematically be impossible to fill up.

However, a party-list organization has to obtain a sufficient number of votes to gain a seat in the second round of seat allocation. What is deemed a sufficient number of votes is dependent upon the circumstances of each election, such as the number of participating parties, the number of available party-list seats, and the number of parties with guaranteed seats received in the first round of seat allocation. To continue the example above, if only ten parties participated in the 2007 party-list election and each party received only one thousand votes, then each of the ten parties would receive 10% of the votes cast. All are guaranteed one seat, and are further entitled to receive two more seats in the second round of seat allocation.

Similarly, a presidential candidate may win the elections even if he receives only one thousand votes as long as all

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his opponents receive less than one thousand votes. A winning presidential candidate only needs to receive more votes than his opponents. The same policy applies in every election to public office, from the presidential to the barangay level. Except for the guaranteed party-list seat, there is no minimum vote requirement before a candidate in any election, for any elective office, can be proclaimed the winner. Of course, the winning candidate must receive at least one vote, assuming he has no opponents or all his opponents do not receive a single vote.

In the absence of a minimum vote requirement in the second round of party-list seat allocation, there is no need to belabor the disparity between the votes obtained by the first and last ranked winning parties in the 2007 party-list elections. In the same manner, no one belabors the disparity between the votes obtained by the highest and lowest ranked winners in the senatorial elections. However, for those interested in comparing the votes received by party-list representatives vis-a-vis the votes received by district representatives, the 162,678 votes cast in favor of TUCP, the last party to obtain a party-list seat, is significantly higher than the votes received by 214 of the 218 elected district representatives.[4]

The Actual Number of Party-List Representatives
in the 2007 Elections

The data used in Table 3 of our Decision promulgated on 21 April 2009 was based on the submissions of the parties. We used the figures from Party-List Canvass Report No. 32, as of 6:00 p.m. of 31 August 2007. The NBC issued NBC Report No. 33 on 11 June 2008, updating the 31 August 2007 report. The parties did not furnish this Court with a copy of NBC Report No. 33. In any case, we stated in the dispositive portion of our Decision that "[t]he allocation of additional seats under the Party-List System shall be in accordance with the procedure used in Table 3 of this decision." Party-List Canvass Report No. 32 is not part of the procedure.

The computation of the COMELEC in NBC No. 09-001 applying the procedure laid down in our Decision requires correction for purposes of accuracy. Instead of multiplying the percentage of votes garnered over the total votes for party-list by 36, the COMELEC multiplied the percentage by 37. Thirty-six is the proper multiplier as it is the difference between 54, the number of available party-list seats, and 18, the number of guaranteed seats. Only the figures in column (C) are affected. The allocation of seats to the winning party-list organizations, however, remains the same as in NBC No. 09-001. Our modification of the COMELEC's computation in NBC No. 09-001 is shown below:

Rank

Party

Votes Garnered

Votes Garnered over Total Votes for Party List, in %

Guaranteed Seat (First Round)

Additional Seats (Second Round)

(B) plus (C), in whole integers

Applying the three seat cap

(A)

(B)

(C)

(D)

(E)

1 BUHAY 1,169,338

7.44%

1

2.68

3

N.A.

2 BAYAN MUNA 979,189

6.23%

1

2.24

3

N.A.

3 CIBAC 755,735

4.81%

1

1.73

2

N.A.

4 GABRIELA 621,266

3.95%

1

1.42

2

N.A.

5 APEC 619,733

3.94%

1

1.42

2

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N.A.

6 A Teacher 490,853

3.12%

1

1.12

2

N.A.

7 AKBAYAN 466,448

2.97%

1

1.07

2

N.A.

8[5] ALAGAD 423,165

2.69%

1

1

2

N.A.

9 COOP-NATCCO 409,987

2.61%

1

1

2

N.A.

10 BUTIL 409,168

2.60%

1

1

2

N.A.

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11 BATAS 385,956

2.45%

1

1

2

N.A.

12 ARC 374,349

2.38%

1

1

2

N.A.

13 ANAKPAWIS 370,323

2.36%

1

1

2

N.A.

14 AMIN 347,527

2.21%

1

1

2

N.A.

15 ABONO 340,002

2.16%

1

1

2

N.A.

16 YACAP 331,623

2.11%

1

1

2

N.A.

17 AGAP 328,814

2.09%

1

1

2

N.A.

18 AN WARAY 321,516

2.04%

1

1

2

N.A.

19 UNI-MAD 251,804

1.60%

0

1

1

N.A.

20 ABS 235,152

1.50%

0

1

1

N.A.

21 ALIF 229,267

1.46%

0

1

1

N.A.

22 KAKUSA 229,036

1.46%

0

1

1

N.A.

23 KABATAAN 228,700

1.45%

0

1

1

N.A.

24 ABA-AKO 219,363

1.40%

0

1

1

N.A.

25 SENIOR CITIZENS 213,095

1.36%

0

1

1

N.A.

26 AT 200,030

1.27%

0

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1

1

N.A.

27 VFP 196,358

1.25%

0

1

1

N.A.

28 ANAD 188,573

1.20%

0

1

1

N.A.

29 BANAT 177,068

1.13%

0

1

1

N.A.

30 ANG KASANGGA 170,594

1.08%

0

1

1

N.A.

31 BANTAY 169,869

1.08%

0

1

1

N.A.

32 ABAKADA 166,897

1.06%

0

1

1

N.A.

33 1-UTAK 165,012

1.05%

0

1

1

N.A.

34 TUCP 162,678

1.03%

0

1

1

N.A.

35 COCOFED 156,007

0.99%

0

0

0

N.A.

Total

18

54

Bagong Alyansang Tagapagtaguyod ng Adhikaing Sambayanan (BATAS) and Ang Laban ng Indiginong Filipino (ALIF) both have pending cases before the COMELEC. The COMELEC correctly deferred the proclamation of both BATAS and ALIF as the outcome of their cases may affect the final composition of party-list

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representatives. The computation and allocation of seats may still be modified in the event that the COMELEC decides against BATAS and/or ALIF.

To address Roa-Borje's motion for partial reconsideration-in-intervention and for purposes of computing the results in future party-list elections, we reiterate that in the second step of the second round of seat allocation, the preference in the distribution of seats should be in accordance with the higher percentage and higher rank, without limiting the distribution

to parties receiving two-percent of the votes.[6] To limit the distribution of seats to the two-percenters would mathematically prevent the filling up of all the available party-list seats.

In the table above, CIBAC cannot claim a third seat from the seat allocated to TUCP, the last ranked party allocated with a seat. CIBAC's 2.81% (from the percentage of 4.81% less the 2% for its guaranteed seat) has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03. The fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties. Thus, for purposes of the second step in the second round of seat allocation,[7] TUCP has a higher rank than CIBAC.

Roa-Borje's position stems from the perceived need for absolute proportionality in the allocation of party-list seats. However, the 1987 Constitution does not require absolute proportionality in the allocation of party-list seats. Section 5(1), Article VI of the 1987 Constitution provides:

> (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 and organizations. (Boldfacing and italicization supplied)

The phrase "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" in Section 5(1) of Article VI requires that legislative districts shall be apportioned according to proportional representation. However, this principle of proportional representation applies only to legislative districts, not to the party-list system. The allocation of seats under the party-list system is governed by the last phrase of Section 5(1), which states that the party-list representatives shall be "those who, as provided by law, shall be elected through a party-list system," giving the Legislature wide discretion in formulating the allocation of party-list seats. Clearly, there is no constitutional requirement for absolute proportional representation in the allocation of party-list seats in the House of Representatives.

Section 2, on Declaration of Policy, of R.A. No. 7941 provides that the "State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof x x x." However, this proportional representation in Section 2 is qualified by Section 11(b)[8] of the same law which mandates a three-seat cap, which is intended to bar any single party-list organization from dominating the party-list system. Section 11(b) also qualifies this proportional representation by imposing a two percent cut-off for those entitled to the guaranteed seats. These statutory qualifications are valid because they do not violate the Constitution, which

does not require absolute proportional representation for the party-list system.

> To summarize, there are four parameters in a Philippine-style party-list election system:
>
> - Twenty percent of the total number of the membership of the House of Representatives is the maximum number of seats available to party-list organizations, such that there is automatically one party-list seat for every four existing legislative districts.
>
> - Garnering two percent of the total votes cast in the party-list elections guarantees a party-list organization one seat. The guaranteed seats shall be distributed in a first round of seat allocation to parties receiving at least two percent of the total party-list votes.
>
> - The additional seats, that is, the remaining seats after allocation of the guaranteed seats, shall be distributed to the party-list organizations including those that received less than two percent of the total votes. The continued operation of the two percent threshold as it applies to the allocation of the additional seats is now unconstitutional because this threshold mathematically and physically prevents the filling up of the available party-list seats. The additional seats shall be distributed to the parties in a second round of seat allocation according to the two-step procedure laid down in the Decision of 21 April 2009 as clarified in this Resolution.
>
> - The three-seat cap is constitutional. The three-seat cap is intended by the Legislature to prevent any party from dominating the party-list system. There is no violation of the Constitution because the 1987 Constitution does not require absolute proportionality for the party-list system. The well-settled rule is that courts will not question the wisdom of the Legislature as long as it is not violative of the Constitution.

These four parameters allow the mathematical and practical fulfillment of the Constitutional provision that party-list representatives shall comprise twenty percent of the members of the House of Representatives. At the same time, these four parameters uphold as much as possible the Party-List Act, striking down only that provision of the Party-List Act that could not be reconciled anymore with the 1987 Constitution.

WHEREFORE, the Court's Decision of 21 April 2009 in the present case is clarified accordingly.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, and Bersamin, JJ., concur.
Nachura, J., see separate opinion.

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[1] Urgent Motion for Clarification in Intervention, pp. 6-17.

[2] Motion for Partial Reconsideration-in-Intervention, p. 11.

[3] Bai Sandra S.A. Sema v. Commission on Elections, et al., G.R. Nos. 177597 & 178628, 16 July 2008, 558 SCRA 700.

[4] Rollo (G.R. No. 179271), pp. 1148-1163.

[5] The product of the percentage and the remaining available seats of all parties ranked eight and below is less than one.

[6] In our Decision of 21 April 2009, we stated: "[W]e do not limit our allocation of additional seats in Table 3 below to the two-percenters. The percentage of votes garnered by each party-list candidate is arrived at by dividing the number of votes garnered by each party by 15,950,900 [now 15,723,764], the total number of votes cast for party-list candidates. There are two steps in the second round of seat allocation. First, the percentage is

multiplied by the remaining available seats, 38 [now 37], which is the difference between the 55 [now 54] maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed. We distributed all of the remaining 38 [now 37] seats in the second round of seat allocation. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled."

[7] Id.

[8] SECTION 11. Number of Party-List Representatives. -- The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

> x x x
>
> In determining the allocation of seats for the second vote, the following procedure shall be observed:
>
> (a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
>
> (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats. (Emphasis supplied)

SEPARATE OPINION

NACHURA, J.:

This will clarify my position in these consolidated cases.

I concurred in the April 24, 2009 ponencia of the Honorable Justice Antonio T. Carpio subject to my submission that Section 11,[1] Republic Act No. 7941[2] or the Party-List System Act, insofar as it requires a two percent (2%) threshold vote to entitle a party, sectoral organization or coalition to a seat in the House of Representatives under the party-list system, is unconstitutional. As explained in my Separate Opinion, the 2% minimum vote requirement poses an insurmountable barrier to the full implementation of Section 5 (2), Article VI of the Philippine Constitution.

My advocacy, however, does not extend to the complete disregard of a threshold vote. I expressed full agreement with [now Chief] Justice Reynato S. Puno who, in his Separate Concurring Opinion in Veterans Federation Party v. Commission on Elections,[3] validated the need for a minimum vote requirement, in order--

> - to avaoid a situation where the candidate will just use the party-list system as a fallback position;
>
> - to discourage nuisance candidates or parties, who are not ready and whose chances are very low, from participating in the elections;
>
> - to avoid the reserve seat system from opening up the system;
>
> - to encourage the marginalized sectors to organize, work hard and earn their seats within the system;

- to enable sectoral representatives to rise to the same majesty as that of the elective representatives in the legislative body, rather than owing to some degree their seats in the legislative body either to an outright constitutional gift or to an appointment by the President of the Philippines;

- if no threshold is imposed, this will actually proliferate political party groups and those who have not really been given by the people sufficient basis for them to represent their constituents and, in turn, they will be able to get to the Parliament through the backdoor under the name of the party-list system; and

- to ensure that only those with a more or less substantial following can be represented.[4]

Thus, we proposed that, until Congress shall have effected an acceptable amendment to Section 11, R.A. 7941, we should abide by the sensible standard of "proportional representation" and adopt a gradually regressive threshold vote requirement, inversely proportional to the increase in the number of party-list seats. Expressed differently, we do not propose that Section 11 or a paragraph thereof be scrapped for being unconstitutional. It is only the ratio of 2% that we find as unconstitutional--the steady increase in the party-list seat allotment as it keeps pace with the creation of additional legislative districts, and the foreseeable growth of party-list groups, the fixed 2% vote requirement/ratio is no longer viable. It does not adequately respond to the inevitable changes that come with time; and it is, in fact, inconsistent with the Constitution, because it prevents the fundamental law from ever being fully operative.

Obviously, the ponencia did not fully accept our submission. It declared as unconstitutional the 2% threshold vote only with respect to the second round of allocating party-list seats (on the additional seats); it continued to apply the 2% minimum vote requirement for entitlement to a seat under the first round of allocation (on the guaranteed seats). This, clearly, was not the intent of our modified concurrence to the ponencia, as expressed in our Separate Opinion.

As expressed in that opinion, the formula which must be adopted--scrapping only the 2% ratio but still adopting a threshold vote requirement, is as follows:

100%
(Total number of votes cast for party-list)
---------- = 1.8518%
54 party-list seats (as clarified)

Clearly, the minimum vote requirement will gradually lessen as the number of party-list seats increases. Thus, in a scenario in which there are 100 party-list seats, the threshold vote is computed as follows:

100%
(Total number of votes cast for party-list)
---------- = 1%
100 party-list seats

This is the more logical and equitable formula. It would judiciously respond to the inevitable changes in the composition of the House of Representatives; it would open opportunities for the broadest people's representation in the House of Representatives; and more importantly, it would not violate the Constitution. Moreover, the threshold vote requirement, as enacted by Congress and as validated by this Court in Veterans, is maintained.

Additionally, the formula will not be discriminatory as it will not only apply in the first round of allocation of seats, but will also be applicable in the second round. While I do not wish to belabor the point, the erroneous application by the ponencia of a threshold vote (2%) in the first round of allocation of seats, and its disregard in the second round, might cause an unintended transgression of the equal protection clause, which requires that all persons or things similarly situated should be treated alike, both as to the rights conferred and responsibilities

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imposed.[5]

Thus, as I have expressed before, with respect to the fixed threshold vote of 2% (only the ratio) in Section 11 of R.A. No. 7941, I join the Court in declaring it unconstitutional, since all enactments inconsistent with the Constitution should be invalidated.

ANTONIO EDUARDO B. NACHURA
Associate Justice

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[1] The provision reads in full:

Section 11. Number of Party-List Representatives. The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

In determining the allocation of seats for the second vote, the following procedure shall be observed:

> (a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
>
> (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats. [Emphasis supplied]

[2] Entitled "AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR"; approved on March 3, 1995.

[3] G.R. No. 136781, October 6, 2000; 342 SCRA 244.

[4] Id. at 290.

[5] Philippine Judges Association v. Prado, supra note 11, at 711-712.

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