

ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC. (ANGKLA), AND SERBISYO SA BAYAN PARTY (SBP), PETITIONERS, VS. COMMISSION ON ELECTIONS (SITTING AS THE NATIONAL BOARD OF CANVAS...

G.R. No. 246816. December 07, 2021

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

Antecedents

Petitioners ANGKLA: Ang Partido Ng Mga Pilipinong Marino, Inc., (ANGKLA) and Serbisyo sa Bayan Party (SBP) move for reconsideration of the Court's Decision dated September 15, 2020 upholding the constitutionality of the proviso in Section 11(b) of Republic Act No. (RA) 7941,[1] viz.:

ACCORDINGLY, the Amended Petition and Petition-in-Intervention are DENIED for lack of merit. The Court declares as NOT UNCONSTITUTIONAL Section 11 (b), RA 7941 pertaining to the allocation of additional seats to party-list parties, organizations, or coalitions in proportion to their respective total number of votes. Consequently, National Board of Canvassers Resolution No. 004-19 declaring the winning party-list groups in the May 13, 2019 elections is upheld.

Let copy of this Decision be furnished to the House of Representatives and the Senate of the Philippines as reference for a possible review of RA 7941, specifically Section 11 (b), pertaining to the seat allocation for the party-list system.

SO ORDERED.[2]

The challenged proviso reads:

Section 11. Number of Party-List Representatives. x x x

x x x x

(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 and underscoring added)

As elucidated in the assailed decision, the first part of Section 11(b), RA 7941 entitles each party-list garnering at least 2% of the votes cast for the party-list system (two-percenters) a guaranteed seat in the House of Representatives. Meanwhile, the challenged proviso allocates additional seats to party-lists "in proportion to their total number of votes." As settled in *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections (COMELEC)*,[3] Section 11(b) of RA 7941 is to be applied, thus:[4]

Round 1:

a.

The participating parties, organizations or coalitions shall be ranked from highest to lowest based on the number of votes they each garnered in the party-list election.

b.

Each of those receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to and guaranteed one seat each.

Round 2, Part 1:

a.

The percentage of votes garnered by each of the parties, organizations and coalitions is multiplied by the remaining available seats after Round 1. All party-list participants shall participate in this round regardless of the percentage of votes they garnered.[5]

b.

The party-list participants shall be entitled to additional seats based on the product arrived at in (a). The whole integer of the product corresponds to a party's share in the remaining available seats. Fractional seats shall not be awarded.

c.

A party-list shall be awarded no more than two (2) additional seats.

Round 2, Part 2:

a.

The party-list party, organization, or coalition next in rank shall be allocated one (1) additional seat each until all available seats are completely distributed.

In the present motion, petitioners insist that the manner of allocating additional seats in the second round violates the "one person, one vote" policy protected under the equal protection clause and our democratic institutions.[6] They assert that "all votes are equal and should carry the same weight." [7] Thus, votes counted and considered in the allocation of guaranteed seats in the first round should be deducted before allocating seats in the second round.[8] To hold otherwise would be a clear instance of double counting of votes where the votes already used to elect a representative via the guaranteed seat are once again used to elect a representative for the additional seat.[9]

Petitioners do not propose that the two-percenters be treated absolutely in the same way as non-two-percenters and admit that the former should have preference; but such preference should only be observed and limited to the grant of guaranteed seats in first round.[10] Otherwise, the votes of the two-percenters "would effectively dilute the weight of the votes for the non-two percenters" which is "inconsistent with the voters' constitutional right to an equally weighted vote." [11]

Petitioners, therefore, pray that the proviso in Section 11(b) of RA 7941 be declared unconstitutional. In lieu thereof, their proposed formula should be applied,[12] viz.:

1.

The parties, organizations, and coalitions taking part in the party-list elections shall be ranked from the highest to the lowest based on the total number of votes they each garnered in the party-list elections.

2.

Each of the parties, organizations, and coalitions taking part in the party-list elections receiving at least two percent (2%) of the total votes cast under the party-list elections shall be entitled to one (1) guaranteed seat each.

3.

Votes amounting to two percent (2%) of the total votes cast for the party-list elections obtained by each of the participating parties, organizations, and coalitions should then be deducted from the total votes of each of these party-list groups that have been entitled to and given guaranteed seats.

4.

The parties, organizations, and coalitions shall thereafter be re-ranked from highest to lowest based on the recomputed number of votes, that is, after deducting the two percent (2%) stated in paragraph 3.

5.

The remaining party-list seats (or the "additional seats") shall then be distributed in proportion to the recomputed number of votes in paragraph 3 until all the additional seats are allocated.

6.

Each party, organization, or coalition shall be entitled to not more than three (3) seats.

Applying this formula, petitioners and intervenor Aksyon Magsasaka – Tinig Partido ng Masa (AKMA-PTM) would be entitled to one (1) seat each at the expense of One Patriotic Coalition of Marginalized Nationals (IPACMAN), Marino Samahan ng mga Seaman, Inc. (MARINO), and Probinsyano Ako.[13]

Petitioners note that Chief Justice Alexander G. Gesmundo adopted their proposed formula in his Dissenting Opinion. Meanwhile, petitioners "humbly assert that while the method proposed by Justice Zalameda stretches the application of the afore-cited provision, Justice Caguioa totally disregards it." [14]

Accordingly, petitioners seek to nullify the seat allocation for party-lists in the May 13, 2019 elections on ground that respondent COMELEC, sitting as the National Board of Canvassers, acted in grave abuse of discretion when it applied the unconstitutional proviso in Section 11 (b) of RA 7941 in allocating additional seats to the winning party-lists.

In its Comment, respondent COMELEC, through the Office of the Solicitor General (OSG) riposte:

First. The Court simply applied the intent and language of Section 11(b) of RA 7941. It could not have devised a different formula for allocating party-list seats – a matter best left to Congress.[15]

Second. There is no double counting of votes to speak of. Though there are two (2) rounds of seat allocation, there is only one (1) round of counting of votes which is done at the beginning of the formula for purposes of ranking the party-lists from highest to lowest.[16]

Finally. The substantial distinction between two-percenters and non-two-percenters justify the preference given to the former. Meanwhile, petitioner's formula which allows for a 2% deduction from the votes of the two percenters would result in an outcome wherein those with lower number of votes will be favored and given seats to the detriment of those that actually obtained higher number of votes.[17]

Threshold Issue

Does the proviso in Section 11 (b) of RA 7941, as implemented through the BANAT formula, violate the "one person, one vote" policy, as well as the equal protection clause?

Ruling

We deny petitioners' motion for reconsideration.

Notably, the issue raised herein has already been passed upon and deliberated in full in the Court's Decision dated September 15, 2020. Indeed, petitioners do not raise any new arguments against the Court's ruling but merely reiterate those raised in their petition.

But majority of the Court remain unconvinced.

First. Petitioners are misguided in their view on how the "one person, one vote" policy applies to the party-list system.

To reiterate, the principle of one person-one vote was discussed in the Dissenting Opinion of retired Associate Justice Antonio T. Carpio in *Aquino III v. COMELEC*,[18] (Aquino) thus:

Evidently, the idea of the people, as individuals, electing their representatives under the principle of "one person, one vote," is the cardinal feature of any polity, like ours, claiming to be a "democratic and republican State." A democracy in its pure state is one where the majority of the people, under the principle of "one person, one vote," directly run the government. A republic is one which has no monarch, royalty or nobility, ruled by a representative government elected by the majority of the people under the principle of "one person, one vote," where all citizens are equally subject to the laws. A republic is also known as a representative democracy. The democratic and republican ideals are intertwined, and converge on the common principle of equality — equality in voting power, and equality under the law.

The constitutional standard of proportional representation is rooted in equality in voting power — that each vote is worth the same as any other vote, not more or less. Regardless of race, ethnicity, religion, sex, occupation, poverty, wealth or literacy, voters have an equal vote. Translated in terms of legislative redistricting, this means equal representation for equal numbers of people or equal voting weight per legislative district. In constitutional parlance, this means representation for every legislative district "in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" or proportional representation. Thus, the principle of "one person, one vote" or equality in voting power is inherent in proportional representation.[19] (emphasis added)

For context, the thrust of Justice Carpio's dissent in *Aquino* was to have RA 9716[20] declared unconstitutional. The assailed law reapportioned the legislative districts of Camarines Sur in order to create a new one. According to Justice Carpio, the reapportionment violated the Constitution as it created a legislative district with less than 250,000 inhabitants. Consequently, the law also violated the "one person, one vote" policy as it effectively overvalues the votes of the district with a lower population and undervalues the votes of the district with more

inhabitants, viz.:

Based on the 2007 census, the proposed First District under RA 9716 will have a population of only 176,383, which is 29% below the constitutional minimum population of 250,000 per legislative district. In contrast, the remaining four proposed districts have populations way above the minimum with the highest at 439,043 (proposed Third District), lowest at 276,777 (proposed Second District) and an average of 379,359. Indeed, the disparity is so high that three of the proposed districts (Third, Fourth, and Fifth Districts) have populations more than double that of the proposed First District. This results in wide variances among the districts' populations. Still using the 2007 census, the ideal per district population for Camarines Sur is 338,764. The populations of the proposed districts swing from this ideal by a high of positive 29.6% (Third District) to a low of negative 47.9% (First District). This means that the smallest proposed district (First District) is underpopulated by nearly 50% of the ideal and the biggest proposed district (Third District) is overpopulated by nearly 30% of the ideal.

The resulting vote undervaluation (for voters in the disfavored districts) and vote overvaluation (for voters in the First District) fails even the most liberal application of the constitutional standards. Votes in the proposed First District are overvalued by more than 200% compared to votes from the Third, Fourth, and Fifth Districts and by more than 60% compared to votes in the Second District. Conversely, votes from the Third, Fourth, and Fifth Districts are undervalued by more than 200% compared to votes in the First District while those in the Second District suffer more than 60% undervaluation.

Proportional representation in redistricting does not mean exact numbers of population, to the last digit, for every legislative district. However, under the assailed RA 9716, the variances swing from negative 47.9% to positive 29.6%. Under any redistricting yardstick, such variances are grossly anomalous and destructive of the concept of proportional representation. In the United States, the Supreme Court there ruled that a variance of even less than 1% is unconstitutional in the absence of proof of a good faith effort to achieve a mathematically exact apportionment.^[21]

Verily, Justice Carpio's concept of "one person, one vote" is akin to absolute proportionality. Meaning, the higher the population, the more representatives. Thus, he fought tooth and nail against giving a legislative district with low population the same voting rights as legislative districts in the same province with substantially higher ones.

Subscribing to this concept of "one person, one vote" would cause chaos in the political landscape not only insofar as the application of Section 11(b) of RA 7941 to party-list systems is concerned, but also with respect to laws reapportioning legislative districts. For if Justice Carpio was correct after all in his invocation of the "one person, one vote" policy, then the Court would effectively be abandoning the ruling in *Aquino* and exposing reapportionment laws such as RA 9716 to possible nullity.

At any rate, we have already discussed in the assailed Decision that the Constitution does not prescribe absolute proportionality in distributing seats to party-lists, organizations, or coalitions. On the contrary, Congress is given a wide latitude of discretion in setting the parameters for determining the actual volume and allocation of party-list representation in the House of Representatives. Section 5(1), Article VI of the Constitution pertinently ordains:

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. (Emphasis and underscoring added)

BANAT further elucidates:

x x x 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.[22] (Emphasis added)

In the exercise of its discretion, Congress enacted RA 7941 which contained mechanisms that prevent the distribution of party-list seats based on absolute proportionality such as the three-seat cap and the two-tiered seat allocation. Notably, these mechanisms are disadvantageous to the two-percenters and beneficial to non-two-percenters. As illustrated in the assailed Decision:

Consider the three-seat limit. This ensures the entry of various interests into the legislature and bars any single party-list from dominating the party-list representation. Otherwise, the rationale behind party-list representation in Congress would be defeated. But viewed from a different perspective, this safeguard dilutes, if not negates, the number of votes that a party-list party, organization, or coalition obtains.

To illustrate, ACT-CIS garnered 2,651,987 votes or 9.51% of the votes cast under the party-list system in the recently concluded elections which would have yielded it six (6) seats in Congress. Otherwise stated, ACT-CIS had votes in excess of what was necessary for it to be awarded three (3) seats in Congress. Yet instead of considering these votes as wastes or a form of disenfranchisement against its voters, the Court does not consider this as a deviation from the "one person, one vote" principle.

Consider also the two-tiered seat allocation. This serves to maximize representation and fulfil the 20% requirement under Section 5 (1), Article VI of the Constitution. Seen in a different light, however, this arithmetical allocation in practice inflates the weight of each of the votes considered in the second round, as far as the non-two percenters are concerned, but deflates the weight of each of the votes considered in the second round, as regards the two-percenters. This is because the two-percent (2%) vote-threshold needed to guarantee a seat in the House of Representatives would definitely be more than the votes it would take to earn an additional seat, whether we apply petitioners' proposal or the doctrine in BANAT.[23] (Emphases added)

Indeed, these mechanisms essentially offset the advantage given to two-percenters in the first round of seat allocation in the form of a guaranteed seat. This is clear from the fact that ACT-CIS party-list which garnered 2,651,987 is only entitled to three (3) seats or an average of 883,996.67 votes per seat while KABATAAN only needed 195,837 to win a seat in Congress. Indubitably, the votes cast in favor of ACT-CIS were undervalued while those of KABATAAN, overvalued.

Petitioners agreed to this uneven valuation of votes when they concurred in the distribution of party-list seats in two (2) rounds using two (2) different formulae. They agreed to it, too, when they proposed that the three-seat limit under the law should still be observed. But perhaps the most telling sign of petitioners' concurrence was their availment of the benefits of the BANAT formula in previous elections, thus:

x x x The Court takes judicial notice of the fact that, thereafter, petitioner ANGKLA was proclaimed as a winning party-list organization in the 2013 and 2016 party-list elections. On the other hand, SBP garnered enough votes to secure a congressional seat in 2016.

Petitioners ANGKLA and SBP had therefore benefited from the BANAT doctrine in the previous elections. In fact, SBP itself, being among the winning party-list groups in the 2016 elections impleaded as respondent in *An Waray v. COMELEC*, even defended the application of the BANAT formula, viz.:

There was no grave abuse of discretion

13. It is indisputable that the COMELEC was merely performing its duties when it adhered to the formula set forth by the Honorable Court. It is fundamental that judicial decisions applying or interpreting the law become

part of the legal system of the Philippines. It becomes law of the land. The COMELEC was therefore not only right, it was duty bound to implement the formula from the Banat Decision.

14. Contrary to the assertions of the Petitioners, the COMELEC would have instead committed grave abuse of discretion if it had implemented the formula which the Petitioners advanced, for to do so would be in direct contravention of the edict of this Honorable Court, as set forth in the Banat Decision. x x x

x x x x

15. x x x It bears emphasis that the Petitioners have not claimed, for indeed they cannot, that the COMELEC failed to properly apply the formula set forth in the Banat Decision. They only claim that their formula is better. As has been shown, this is not the case. The Petitioners' formula, far from being better, is susceptible to violations of the law.

x x x x

20. The claim of proportionality, upon which the Petitioners premise their claim of grave abuse, and to which the Petitioners so furiously cling, has already been addressed and laid to rest in the Banat Resolution. x x x

21. As has been stated by the Honorable Court, there is no Constitutional requirement for absolute proportional representation in the allocation of party-lists seats. The term "proportional," by its very nature, means that it is relative. It cannot be successfully argued that the current formula for allocating party-list seats is not proportional.

22. What the Petitioners seek, or at least what they are impliedly seeking, is absolute proportionality. Such absolute proportionality is neither mandated by the Constitution nor the law. Much less can it be effected through a flawed formula such as that proposed by the Petitioners.

As for AKMA-PTM, way back in 2013, it initiated the petition in G.R. No. 207134 entitled AKMA-PTM v. COMELEC. Far from questioning the constitutionality of the proviso in Section 11 (b) of RA 7941 therein, AKMA-PTM even vigorously asserted, nay, invoked the application of this law in its favor as among those who purportedly won a party-list congressional seat during the 2013 National and Local Elections. It also invoked the application of BANAT for this same purpose.[24] (Emphases added)

The Court is therefore in quandary on why petitioners are now claiming that the votes of non-two-percenters are being diluted in supposed violation of the "one person, one vote" policy when they should have known based on their prior experience that, on the contrary, it is their votes which are being overvalued when seats are allocated in their favor in the second round.

Second. The BANAT formula is in accordance with the clear language and intent of the law.

As it currently stands, the BANAT formula mirrors the textual progression of Section 11(b) of RA 7941. As keenly noted by Senior Associate Justice Estela M. Perlas-Bernabe, the first round is based on the first sentence of Section 11(b), while the second round is based on the first proviso that follows in sequence.

Petitioners admit that there is a substantial distinction between two--percenters and non-two-percenters and agrees that the former should be given preference in the form of a guaranteed seat. But they nevertheless claim that such preference should be limited to the first round of seat allocation; when it comes to the allocation of the additional seats, the votes of the two-percenters should first be reduced by 2%.

We do not agree.

The intention behind the proviso is clear – only the two-percenters were supposed to participate in the second round of seat allocation and with full votes at that. This can be deduced from the language of the proviso which

originally allocated seats only to those "garnering more than two percent (2%) of the votes."

Thus, in *Veterans Federation Party v. COMELEC*,^[25] the Court crafted a formula for seat allocation with two (2) notable characteristics: first, only the two-percenters were allowed to participate in the second round of seat allocation; and second, the two-percenters participated in the second round of seat allocation with their full votes intact. Applying this formula, the Court, in *Veterans*, awarded only 14 seats to the 13 party-lists which surpassed the 2% threshold despite the availability of 51 seats reserved for the party-list system.

This manner of allocation in *Veterans* was sustained in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*^[26] in relation to the 2001 elections, and in *Partido ng Manggagawa v. Commission on Elections*^[27] and *Citizens' Battle Against Corruption v. Commission on Elections*^[28] both in relation to the 2004 elections.

It was not until 2009, through the Court's ruling in *BANAT*, when the second round of seat allocation was opened up to non-two-percenters by removing the 2% threshold for additional seats. But this was only to fulfil the constitutional mandate that 20% of the total membership of the House of Representatives be reserved for party-list representatives under Article VI, Section 5(2) of the Constitution.^[29]

In other words, only the first characteristic of the *Veterans* formula was negated by the removal of the 2% threshold; the second characteristic was retained. This is in clear recognition of the original intent behind the law to allow the two-percenters to participate in the second round of seat allocation with their full votes intact.

Third. Allowing the two-percenters to participate in the second round of seat allocation with full votes does not result in double-counting of votes. We have extensively discussed this in the ponencia, thus:

Petitioners foist the idea that only the votes of the two-percenters were counted and considered in the first round. x x x

x x x x

Nothing is farthest from the truth. All votes were counted, considered, and used during the first round of seat allocation, not just those of the two-percenters. But in the end, the non-two-percenters simply did not meet the requisite voting threshold to be allocated a guaranteed seat.

As correctly argued by the OSG, the system of counting pertains to two (2) different rounds and for two (2) different purposes: the first round is for purposes of applying the 2% threshold and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the second round is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected via a party-list system, thus, seats are computed in proportion to a party-list's total number of votes.

Such is the current state of the party-list system elections. Since the system does not have a defined constituency as in district representation, elections are won by hurdling thresholds, not by sheer plurality of votes. Congress deemed it wise to set two (2) thresholds for the two (2) rounds of seat allocation. Each party-list earns a seat each time they hurdle the threshold in each round. But to clarify, each vote is counted only once for both rounds.

In the first round, party-lists receiving at least 2% of the total votes cast for the party-list system are entitled to one seat. In determining whether a party-list has met the proportional threshold, its percentage number of votes is computed, as follows:

Number of votes obtained by a Party-list
Total number of votes cast under the
party-list system

The "total number of votes cast under the party-list system," the very divisor of the formula, the very index of proportionality, requires that all votes cast under the party-list system be counted and considered in allocating seats in the first round, be it in favor of a two-percenter or a non-two-percenter. This only goes to show that all votes were counted and considered in the first round. Just because the non-two-percenters were not allocated a guaranteed seat does not mean that their votes were accorded lesser weight, let alone, disregarded. It simply means that they did not reach the proportional threshold in the first round.

x x x x

Just as how all votes were considered in the first round of seat allocation, all votes would be considered in the first part of the second round of seat allocation, too. Lest it be misunderstood, though, there is no second round of counting at this stage. We do not recompute the number of votes obtained by each party nor the percentage of votes they garnered. We do not tally the votes anew. We do not modify the data used in the first round. Instead, the number of votes cast for each party as determined in the first round is preserved precisely to ensure that all votes are counted only once.[30] (Emphases and underscoring added)

On the other hand, imposing a 2% penalty against two-percenters in the second round would yield an absurd result which, too, had been illustrated in the assailed Decision:

For better appreciation, assume that party-list X garnered exactly 2% of the votes cast for the party-list system. Indubitably, it is guaranteed a seat in the first round of allocation. For the second round, its 2% vote will still be intact and will serve as the multiplier to the remaining number of seats after the first round of distribution.

In petitioners' proposal, however, a 2% deduction will be imposed against party-list X before proceeding to the second round. This would result in X falling to the bottom of the ranking with zero percent (0%) vote, dimming its chances, if not disqualifying it altogether, for the second round. This is contrary to the language of the statute which points to proportionality in relation to the TOTAL number of votes received by a party, organization, or coalition in the party-list election, and the intention behind the law to acknowledge the two-percenters' right to participate in the second round of seat allocation for the additional seats.[31] (Emphases added)

Fourth. Even assuming *arguendo* that the proviso in Section 11(b) is void, this does not automatically result in the application of petitioners' formula. To be sure, the nullity of the assailed proviso would result in the following phraseology of Section 11(b):

(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.

x x x x

Meanwhile, petitioners propose that the second round of seat distribution be accomplished, thus:

x x x x

3.

Votes amounting to two percent (2%) of the total votes cast for the party-list elections obtained by each of the participating parties, organizations, and coalitions should then be deducted from the total votes of each of these party-list groups that have been entitled to and given guaranteed seats.

4.

The parties, organizations, and coalitions shall thereafter be re-ranked from highest to lowest based on the recomputed number of votes, that is, after deducting the two percent (2%) stated in paragraph 3.

5.

The remaining party-list seats (or the "additional seats") shall then be distributed in proportion to the recomputed number of votes in paragraph 3 until all the additional seats are allocated.

x x x x

But these proposed steps do not have textual basis. Nowhere is it stated in RA 7941 that a two percent (2%) deduction would first be imposed on the two-percenters before they may be allowed to participate in the second round of seat allocation. Neither does RA 7941 read that the parties will be re-ranked before distributing additional seats.

Clearly, petitioners would have us plant words into RA 7941 which are not there. This would be nothing short of judicial legislation, if not usurpation of legislative powers, as it would allow us to substitute the wisdom of Congress with ours.

The Court is not in the position though to give its imprimatur on petitioners' construction of Section 11(b) of RA 7941 at the risk of expanding the law as currently couched. We do not "correct" laws by reading into them more than what they contain; we merely apply what is written. And what is currently written in Section 11(b) of RA 7941 does not need correction as it does not offend any constitutional guarantee. Thus, should petitioners insist on the application of their formula, the proper remedy is not to have the law "corrected" through judicial fiat but to have Congress amend and tailor the law based on their proposal.

The dissents likewise offer varying formulae on what they believe is a more equitable and straightforward distribution of seats to party-lists. But whether these formulae are better, which they may very well be, is beside the point. For they, too, were not spelled out in the law. To stress, we are not here to discuss the merits of each formula, only to determine what the applicable formula actually is based on the text of the law and in accordance with Constitutional standards. And as stated, the textual progression of Section 11(b) of RA 7941 is mirrored by the BANAT formula and, contrary to petitioners' claim, does not offend the equal protection clause.

All told, the idea of the petitioners and the dissents on what is fair and equitable is simply not what was legislated. Indeed, there are infinite methods of allocating additional seats which may be considered fair, equitable, and proportional. But surely, it is not for the Court to recalibrate the formula for the party-list system to obtain the "broadest representation possible" and make it seemingly less confusing and more straightforward. This is definitely a question of wisdom which the legislature alone may determine for itself. Thus, until RA 7941 is amended, Section 11(b) as outlined in BANAT remain to be the applicable law.

ACCORDINGLY, petitioners' motion for reconsideration is DENIED for utter lack of merit. Let entry of judgment issue immediately.

SO ORDERED.

Carandang, Inting, and Rosario, JJ., concur.

Gesmundo, C.J., see separate dissenting opinion.

Perlas-Bernabe, J., I reiterate my separate concurring opinion.

Leonen, J., I reiterate my concurring opinion in the main decision.

Caguioa, J., I reiterate my separate opinion.

Hernando, J., I join the Separate Dissenting Opinion of Chief Justice Gesmundo.

Zalameda, J., I reiterate my dissenting opinion.

M. Lopez, J., I reiterate my concurring and dissenting opinion.

Gaerlan, J., I join the separate opinion of J. Zalameda.

J. Lopez, J., with separate dissenting opinion.

Dimaampao, J., on official leave but left and voted. See separate concurring and dissenting opinion.

Marquez, J., I join the dissent of CJ Gesmundo.

[*] Also referred to as Commissioner B. Socorro Inting in the petition.

[1] AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR.

[2] Rollo, p. 305.

[3] 609 Phil. 751 (2009).

[4] Id. at 769.

[5] In *BANAT v. Commission on Elections*, 604 Phil. 131 (2009), the Court declared the two percent threshold unconstitutional insofar as the allocation of additional seats is concerned.

[6] Rollo, p. 419.

[7] Id. at 420.

[8] Id. at 421.

[9] Id. at 423.

[10] Id. at 422-423.

[11] Id. at 424-425.

[12] Id. at 434.

[13] Id. at 429-433.

[14] Id. at 429.

[15] Id. at 460-468.

[16] Id. at 468-470.

[17] Id. at 471-477.

[18] 631 Phil. 595 (2010).

[19] Id. at 637-638.

[20] AN ACT REAPPOINTING THE COMPOSITION OF THE FIRST (1st) AND SECOND (2nd) LEGISLATIVE DISTRICTS IN THE PROVINCE OF CAMARINES SUR AND THEREBY CREATING A NEW LEGISLATIVE DISTRICT FROM SUCH REAPPOINTMENT

[21] Id. at 643-644.

[22] *Supra* note 2 at 767-768.

[23] *ANGKLA v. Commission on Elections*, G.R. No. 246816, September 15, 2020.

[24] *Id.*, citing the Comment in G.R. No. 224846 entitled "An Waray, Agricultural Sector Alliance of the Philippines (ACAP), and Citizen's Battle Against Corruption (CIBAC) v. COMELEC, Ating Agapay Sentrong Samahan ng mga Obrero, Inc. (AASENSO), Serbisyo sa Bayan Party (SBP), et al."

[25] 396 Phil. 419 (2000).

[26] 452 Phil. 899 (2003).

[27] 519 Phil. 644 (2006).

[28] 549 Phil. 767 (2007).

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

[30] *ANGKLA v. COMELEC*, G.R. No. 246816, September 15, 2020.

[31] *Id.*

G.R. No. 246816 (*ANGKLA: Ang Partido ng mga Marinong Pilipino, Inc. and Serbisyo sa Bayan Party, petitioners v. Commission on Elections [sitting as the National Board of Canvassers], Chairman Sheriff M. Abas, Commissioner Al A. Parreno, Commissioner Luie Tito G. Guia, Commissioner Ma. Rowena Amelia v. Guanzon, Commissioner Socorro B. Inting,[*] Commissioner Marlon S. Casquejo and Commissioner Antonio T. Kho, Jr., respondents*).

(*Aksyon Magsasaka - Partido Tinig ng Masa [AKMA-PTM]*, petitioner-in-intervention).

DISSENTING OPINION

GESMUNDO, C.J.:

On September 15, 2020, a sharply divided court promulgated its decision in this instant case, the dispositive portion reads:

"ACCORDINGLY, the Amended Petition and Petition-in-Intervention are DENIED for lack of merit. The Court declares as NOT UNCONSTITUTIONAL Section 11(b), RA 7941 pertaining to the allocation of additional seats to party-list parties, organizations, or coalitions in proportion to their respective total number of votes. Consequently, National Board Canvassers Resolution No. 004-19 declaring the winning party-list groups in the May 13, 2019 elections is upheld.

Let copy of this Decision be furnished to the House of Representatives and the Senate of the Philippines as reference for a possible review of RA 7941, specifically Section 11(b), pertaining to the seat allocation for the party-list system.

SO ORDERED."[1]

The majority opinion, written by Madame Justice Amy C. Lazaro-Javier, sustained the validity of the assailed

provision, negating the existence of violation of the equal protection clause and the principle of one person-one vote concept and justifying the soundness of the formula provided for in BANAT v. Commission on Elections (BANAT). The majority opinion was joined by Justice Jose C. Reyes (ret.), Justice Rosmari D. Carandang and Justice Henri Jean Paul B. Inting. Senior Associate Justice Estela M. Perlas-Bernabe and Justice Marvic Mario Victor F. Leonen submitted their respective separate concurring opinion while Justice Mario V. Lopez submitted his separate concurring and dissenting opinion. Justice Priscilla Baltazar-Padilla (deceased) was then on leave.

Justice Alfredo Benjamin S. Caguioa submitted his separate opinion where he agreed with the dismissal of the petition but with a call to abandon the BANAT formula for failing to reflect the spirit and intention of the Constitution and Republic Act (R.A.) No. 7941. Instead, he proposed to adopt a straightforward formula to be used in the succeeding elections.

On the other hand, Justice Rodil V. Zalameda, who was joined by Justice Edgardo L. Delos Santos (ret.) and Justice Samuel H. Gaerlan, wrote a separate dissenting opinion where he concluded that the assailed provision indeed violated the equal protection clause because of the double voting that occurs in the BANAT formula where votes used to qualify for a guaranteed seat were again used to qualify for the additional seat. To remedy this obnoxious scenario, Justice Zalameda opined that the first round of allocation should allocate at least 1 but not more than 3 seats depending on the total number of votes cast for the party-list group. The variance in excess of 2% or 4% (which would correspond either to 1 or 2 seats) shall be computed and accordingly ranked with the non-two percenters for purposes of distributing additional seats under the BANAT formula.

Lastly, in my dissenting opinion, joined by then Chief Justice Diosdado M. Peralta (ret.) and Justice Ramon Paul L. Hernando, I concluded that the current BANAT formula violates the equal protection clause and the principle of "one person, one vote" which is the bedrock of every democratic and republic system. Consistent with the constitutional intent and spirit of R.A. No. 7941, I adopted petitioners' formula in the allocation of seats, thus:

1. 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;
2. 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 guaranteed seat each;
3. Subtract the two percent (2%) of the votes from the percentage of the total votes garnered of the party list groups which were already allocated a guaranteed in the first round, then re-rank the groups accordingly;
4. Multiply the percentage of total votes garnered by each party, as adjusted, with the total number of remaining available seats;
5. The whole integer product shall be the party's share in the remaining available seats;
6. Assign one party-list seat to each of the parties next in rank until all available seats are completely distributed;
7. Each party, organization, or coalition shall be entitled to not more than three (3) seats.

Unperturbed, petitioners filed this instant Motion for Reconsideration,[2] seeking the reversal of the majority opinion promulgated last September 15, 2020. They claimed that the majority of the Court erred in sustaining the BANAT formula despite the blatant double counting or crediting of votes that occurs in the BANAT formula. They urge the Court to use the formula that they proposed and which I adopted in my dissenting opinion.

In response, respondent prays for the denial of the motion for reconsideration and argues that the majority of the Court did not err in sustaining the validity of Section 11(b) of R.A. No. 7941 as the Court merely applied the

meaning and intention of Congress.

After much thought, I maintain my dissent.

I still maintain the position that the BANAT formula is constitutionally obnoxious as it perpetuates the invalid practice of double counting of votes in violation of the equal protection clause and the one person-one vote principle. To recall, I illustrated how the double counting occurs in my September 15, 2020 Dissenting Opinion, thus:

From the foregoing, two (2) things are clear. First, the concept of "one person, one vote" is inherent in our system and need not be expressly stated because it is a necessary consequence of the republican and democratic nature of the Philippines state. Second, the concept of "one person, one vote" is protected under the mantle of equal protection since the weight of the vote of a person is the same as others and there is no substantial distinction per voter whether on the basis of race, gender, age, lineage, social standing or education.

Considering the concepts discussed above, I am convinced that the BANAT formula for distributing additional seats violates this principle.

As correctly pointed out by the petitioners, the 2% votes to justify the allocation of one (1) guaranteed seat were already considered and used during the allocation of the guaranteed seats. To consider them again, this time for purposes of allocating additional seats, would give these votes more weight or more value than others in violation of the equal protection clause as it gives due preference to votes received by party-list organizations who got 2% of the votes from those who did not.

Justice Javier seems to justify the grant of "double counting votes" by alleging that there is substantial distinction between party-list organizations who received 2% or more of the total votes cast and those party-lists who did not meet the threshold. Thus, justifying the difference in treatment, i.e., allowing the votes already counted for the guaranteed seat to once again be considered for the allocation of additional seat.

Again, I cannot subscribe to this argument.

First, a reading of Veterans, would show that Veterans never discussed the validity of the 2% threshold on equal protection grounds. Veterans upheld the 2% threshold on the basis of the intent of the Constitutional framers and the intent of Congress to ensure proper representation; and for Congress, 2% of the total votes cast would already ensure a mandate. Even if there is an equal protection component in Veterans, its justification is limited only in the first round. The same treatment cannot be extended to the allocation of the additional seat. This is simply not part of Veterans and would be an unacceptable stretch of the Court's argument.

Second, there seems to be a contradiction in the stance of Justice Javier when, in one breath, she claims that the double counting of votes is acceptable, since there is substantial distinction between groups obtaining the needed 2% threshold and those who do not, and at the same time declares that there is no double counting of votes since the deduction of 2% as BANAT instructs "is done in the second step of the second round of the seat allocation not in the first step of the second round." The stance is self--defeating.

Third, the argument that the deduction of the 2% was made is not an accurate claim. While there is indeed a reduction of the percentages garnered by party-list organizations in the distribution of the additional seats following BANAT, the reduction does not amount to the 2% of the total votes cast. This is because in the round that allocates the guaranteed seat, its proportionality is based on the total number of votes cast for the party-list election while in the round for the allocation of additional seats, the proportionality is not dependent on the numbers of votes cast alone but also on the total number of reserved remaining party-list seats in Congress. Thus, the reason for the reduction is not the deduction of the 2% allocated for the guaranteed seats but because of the change in the basis of the proportionality which is now the total number of votes cast AND the total number of seats remaining for party-list organizations after deducting the number of guaranteed seats

already allocated. This is why the reduction from the percentage in the guaranteed seats to the percentage in the additional seat can never be 2%. Hence, to claim that there is no double counting of votes because the 2% considered was already deducted is without basis.

Lastly, even if there is an exact 2% reduction given to the party-list organizations who garnered the 2% threshold, the BANAT formula would still be flawed considering that the reduction in the allocation of the additional seats apply not only to party-list organizations who obtained the 2% threshold but to all parties since all parties will be subjected to the same formula. Thus, any deduction brought about by the formula to the group who obtained the 2% threshold, the same deduction will be applied to the others. Conversely stated, if there are no double counting of votes because the 2% was deducted only from those party-list organizations who already qualified to get a guaranteed seat, then why the reduction on the percentages of votes of party-list organizations who failed to meet the 2% requirement in the allocation of additional seat? Thus, it cannot be said that there is no inequality of votes here.

Clearly, this double counting of votes creates a classification that does not justify the requirements of a valid classification; particularly, the classification not being germane to the purposes of the law. There is no justification why there is a need to re-credit votes already credited. Further, there can be no conceivable explanation why the vote of one person should have more value compared to others. A contrary rule would be obnoxious to the democratic and republican nature of the country and the promise of equal protection under the Bill of Rights.

As such, since there is double counting of votes and the same violates the equal protection clause, particularly the "one person, one vote" mantra of democratic and republican states, the formula as to the allocation of additional seats must be fine-tuned to address this conundrum.

In recommending the denial of the motion for reconsideration, the ponente insists that the principle of "one person, one vote" is not applicable in party-list elections as it only applies to district elections following *Aquino III v. Commission on Elections (Aquino)*. For the ponente, to extend the application of the one person-one vote principle to party-list and to apportionment laws would effectively overturn *Aquino* and subject apportionment laws like R.A. No. 9716 to possible constitutional challenges.[3]

Also, for the ponente, the one person-one vote principle calls for absolute proportionality which the law does not require.

Lastly, the proposal in my dissenting opinion has no basis in the Constitution or in R.A. No. 7941.

Regrettably, I cannot share my colleague's learned disquisition. Contrary to the position of the ponente, the one person-one vote principle is applicable in party-list elections particularly when there is inequality in the crediting of votes coming from similarly situated voters in a constituency. More, as it stands, the one person-one vote principle, as applied in our party-list elections does not result into absolute proportionality as the said elections have inherent mechanisms that prevent the attainment of said absolute proportionality. This is why, in *Veterans, Justice Panganiban* characterized the party-list elections in this country as "unique," even dubbing it as *Party-list Elections: Philippine Style*.^[4] Lastly, contrary to the position of the ponente, the resulting proposal is but a result of judicial action of declaration of unconstitutionality and does not amount to judicial legislation.

Allow me to explain.

The ponente insists that the concept of one person-one vote is akin to absolute proportionality and has no application to apportionment or reapportionment laws or to our party-list elections.

I respectfully beg to differ.

As discussed in my September 15, 2020 Dissenting Opinion, the one person-one vote concept is rooted in the

democratic and republican nature of the Philippine state, thus:

Article II, Sec. I provides that the Philippines is a democratic and, republican State. Sovereignty resides in the people and all government authority emanates from them. For the Constitutional framers, the concept of republicanism was added to purposely declare that the country adopts a representative democratic system where leaders are chosen by the people to govern and lead them.

As a tool to determine the representatives of the people, elections are held during such event, the people exercise their sovereign power to choose their leaders. In this regard, the equal protection clause ensures that a person is entitled to one vote and such vote carries the same weight as others. There are no privileged individuals whose vote is weightier than others simply because of gender, race or station in life.

Retired Senior Associate Justice Antonio T. Carpio succinctly discussed this equality of weight of votes or the "one person[,] one vote" concept in his Dissenting Opinion in *Sen. Aquino III v. COMELEC*, thus-

Evidently, the idea of the people, as individuals, electing their representatives under the principle of "one person, one vote," is the cardinal feature of any polity, like ours, claiming to be a "democratic and republican State." A democracy in its pure state is one where the majority of the people, under the principle of "one person, one vote," directly run the government. A republic is one which has no monarch, royalty or nobility, ruled by a representative government elected by the majority or the people under the principle of "one person, one vote," where all citizens are equally subject to the laws. A republic is also known as a representative democracy. The democratic and republican ideals are intertwined, and converge on the common principle of equality – equality in voting power, and equality under the law.

The constitutional standard of proportional representation is rooted in equality in voting power – that each vote is worth the same as any other vote, not more or less. Regardless of race, ethnicity, religion, sex, occupation, poverty, wealth or literacy, voters have an equal vote. x x x

While the ponente is correct to state that the one person-one vote concept is a hallmark of proportional representation, it does not mean that the same principle cannot apply to issues of apportionment or malapportionment, gerrymandering and other issues of voting equality.

On the contrary, the one person-one vote concept is particularly applicable to the validity of apportionment when issues of equal protection are raised. Apportionment is defined as the determination of the number of representatives which a State, county or other subdivision may send to a legislative body. It is the allocation of seats in a legislative body in proportion to the population; the drawing of voting district lines so as to equalize population and voting power among the districts. Reapportionment, on the other hand, is the realignment or change in legislative districts brought about by changes in population and mandated by the constitutional requirement of equality of representation.[5] At its most basic, therefore, apportionment or reapportionment is simply the determination of how many representatives are to be sent to Congress.

In *Reynolds v. Sim*[6] (*Reynolds*), the United States Supreme Court (USSC) noted the unequal populations of different counties that resulted in the disparity in voting powers of counties in Alabama due to years of no reapportionment laws being passed. The USSC then observed:

A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government laws, and not men. This is at the heart of Lincoln's vision of 'government of the people, by the people, [and] for the people.' The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races."

The USSC then concluded:

We hold that, as a basic constitutional standard the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. Since under neither the existing apportionment provisions nor either of the proposed plans was either of the houses of the Alabama Legislature apportioned on a population basis, the District Court correctly held that all three of these schemes were constitutionally invalid. Furthermore, the existing apportionment, and also, to a lesser extent, the apportionment under the Crawford-Webb Act, presented little more than crazy quilts, completely lacking in rationality, and could be found invalid on that basis alone.

Also, in *Wesberry v. Sanders*,^[7] the USSC reversed the district court's dismissal of the complaint against the 1931 Georgia apportionment law that created constituencies that have glaring unequal populations. In applying the one person-one vote principle, the Court noted:

We hold that, construed in its historical context, the command of Art. I, 2, that Representatives be chosen "by the People of the several States" means that as [376 U.S. 1, 8] nearly as is practicable one man's vote in a congressional election is to be worth as much as another's. This rule is followed automatically, of course, when Representatives are chosen as a group on a statewide basis, as was a widespread practice in the first 50 years of our Nation's history. It would be extraordinary to suggest that in such statewide elections the votes of inhabitants of some parts of a State, for example, Georgia's thinly populated Ninth District, could be weighted at two or three times the value of the votes of people living in more populous parts of the State, for example, the Fifth District around Atlanta, Cf. *Gray v. Sanders*, 372 U.S. 368. We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected "by the People," a principle tenaciously fought for and established at the Constitutional Convention. The history of the Constitution, particularly that part of it relating to the adoption of Art. I, 2, reveals that those who framed the Constitution [376 U.S. 1, 9] meant that, no matter what the mechanics of an election, whether statewide or by districts, it was population which was to be the basis of the House of Representatives.

Lastly, the county unit system, the system used during the primary election for the Democratic party in the state of Georgia was challenged in *Gray v. Sanders*^[8] (Gray). There, petitioner claims that under the system, the value of the vote of a person counts for less and less as the population of the county increases. The Court eventually held that the principle of one person-one vote applies even to the primary elections which was practically an election. Also, it upheld the principle in this case holding that:

The Fifteenth Amendment prohibits a State from denying or abridging a Negro's right to vote. The Nineteenth Amendment does the same for women. If a State in a statewide election weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote; none could successfully contend that discrimination was allowable. See *Terry v. Adams*, 345 U.S. 461. How then can one person be given twice or ten times the voting power of another person in a state-wide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote – whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of [372 U.S. 368, 380] "we the people" under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions.

The Court had consistently recognized that all qualified voters have a constitutionally protected right "to cast their ballots and have them counted at Congressional elections." *United States v. Classic*, 313 U.S. 299, 315; see *Ex parte Yarbrough*, 110 U.S. 651; *Wiley v. Sinkler*, 179 U.S. 58; *Swafford v. Templeton*, 185 U.S. 487. Every voter's vote is entitled to be counted once. It must be correctly counted and reported. As stated in *United States v. Mosely*, 238 U.S. 383, 386, "the right to have one's vote counted" has the same dignity as "the right to put a ballot in a box." It can be protected from the diluting effect of illegal ballots. *Ex parte Siebold*, 100 U.S. 371; *United States v. Saylor*, 322 U.S. 385. And these rights must be recognized in any preliminary election that in fact determines the true weight a vote will have. See *United States v. Classic*, *supra*; *Smith v. Allwright*, *supra*. The concept of political equality in the voting booth contained in the Fifteenth Amendment extends to all phases of state elections, see *Terry v. Adams*, *supra*; and as previously noted, there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State. (underscoring supplied)

In all these cases, while they show vestiges of proportional representation, they also demonstrate that the principle of one person-one vote is equally applicable in questioning apportionment or reapportionment laws and the effects of malapportionment, even in primary elections, as long as there is unequal treatment of votes. Hence, with due respect, the limitation of the ponente as to the application of the doctrine is unfounded and there is no reason to single out party-list elections as an exemption from the application of the principle. Echoing *Gray*, party-list elections are practically an election.

Of course, the power of the courts to strike down invalid apportionment laws has been long recognized when it thwarts the equal protection clause. In *Baker v. Carr*,^[9] again, the USSC ruled that:

Under the Equal Protection Clause, a claim of debasement of the right to vote through malapportionment presents a justiciable controversy, and the Equal Protection Clause provides manageable standards for lower courts to determine the constitutionality of a state legislative appointment scheme.

Here, the issue of distribution of party-list seats is an issue of apportionment because it is a determination of how many representatives qualify for a seat in Congress. The only difference here is that unlike in *Reynolds*, *supra*, the constituency is national in character rather than by district or counties. If citizens from a different county are counted and treated differently from citizens from another country, this would result in a violation of the one person-one vote principle; much more with the present BANAT formula, which credits the votes gained by two percenters twice – once for the guaranteed seat and the other for the additional seat – to the detriment of the non-two percenters and giving greater voting power to voters of the two percenters compared to voters of the non-two percenters wholly without basis.

Simply put, in a national constituency, where every voter should have equal voting power, the BANAT formula credits votes twice when others credited only once. This is a blatant violation of the equal protection clause and the one person-one vote dictum.

Similarly, the claim that the one person-one vote principle in the Philippine party-list elections would result into absolute proportionality is clearly erroneous. A strict application of the one person-one vote principle is not achievable here because of the mechanisms in place under R.A. No. 7941, i.e., the two percent threshold and the three-seat cap. As such, these mechanisms prevent the application of absolute proportionality as they prevent party-list organizations who got more votes to be entitled to more seats following the Constitutional dictum of opening up the system to more interests and groups. Thus, claims of applying the doctrine of one person-one vote leading to absolute proportional representation is unfounded.

Lastly, I would like to stress that the inclusion of additional steps in the proposed formula are incidents of judicial power and does not amount to judicial legislation.

In *Philippine Judges Association v. Prado*,^[10] Sec. 35 of R.A. No. 7354 as implemented by the Philippine Postal Corporation through its Circular No. 92-28, effectively removed from the Judiciary its franking privileges but maintained the same privilege in favor of the other two great departments of Government. The Court therein declared the same as unconstitutional for violating the equal protection clause. Interestingly, as an effect of this judicial action, the Court restored the franking privileges that R.A. No. 7354 withdrew. This is clear in the fallo, thus:

ACCORDINGLY, the petition is partially GRANTED and Section 35 of R.A. No. 7354 is declared UNCONSTITUTIONAL. Circular No. 92-28 is SET ASIDE insofar as it withdraws the franking privilege from the Supreme Court, the Court of Appeals, the Regional Trial Courts, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the National Land Registration Authority and its Register of Deeds to all of which offices the said privilege shall be RESTORED. The temporary restraining order dated June 2, 1992, is made permanent.

SO ORDERED.^[11]

As can be gleaned above, declaration of unconstitutionality of a legislative or executive act would result in the removal of the obnoxious portions of the law. This is the purpose of the additional steps in the proposal. Obviously, the additional step, not in the letter of the law but included as an incident of a court decision, is the removal of the phrase "in proportion to their total number of votes" in Section 11(b), R.A. No. 7941. Thus, the formula proposed in my dissenting opinion preserves the intent of Congress and the Constitution while disregarding the inappropriate provisions that run contrary to the latter.

WHEREFORE, I vote to GRANT the Motion for Reconsideration and DECLARE Section 11(b) of Republic Act No. 7941 as UNCONSTITUTIONAL.

[*] Also referred to as "Commissioner Socorro B. Inting" in the petition.

[1] G.R. No. 246816, September 15, 2020.

[2] Rollo, pp. 404-440.

[3] Synopsis, pp. 6-7.

[4] *Veterans v. Commission on Elections*, 396 Phil. 419, 445, 453 (2000).

[5] *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 690-691 (2008).

[6] 377 U.S. 533 (1964).

[7] 376 U.S. 1 (1964).

[8] 372 U.S. 368 (1963).

[9] 369 U.S. 186 (1964).

[10] 298 Phil. 502, 514-516 (1993).

[11] *Id.* at 517.

SEPARATE DISSENTING OPINION

LOPEZ, J., J.:

In their motion for reconsideration, while petitioners prayed for the declaration of unconstitutionality of Section 11(b) of Republic Act No. 7941 (R.A. No. 7941)[1] pertaining to the allocation of additional seats, the essence of their motion, which echoes their petition, seeks to revisit the formula provided in the case of *BANAT v. COMELEC*[2] (Banat formula). They proposed to deduct the fraction of votes obtained by parties that obtained two percent (2%) of the votes cast for the party-list election, which have already been counted in the first round of seat allocation when it comes to the distribution of the remaining number of seats allocated for the party-list representatives. Thereafter, the votes shall be re-ranked and the remaining seats be distributed in accordance with this ranking.

The petitioners' claim is anchored on the alleged double counting votes obtained by parties that already garnered a guaranteed seat, in the distribution of additional seats.

I vote to grant the petitioners' motion for reconsideration.

The process for the distribution of seats for party-list representatives as adopted by the Commission on Elections (COMELEC) involves double counting of votes. However, it must be clarified that this is not brought by the phrase "seats in proportion to their total number of votes" under Section 11(b) of R.A. No. 7941; rather, it is the result of treating the 2% threshold as a tool to determine the number of guaranteed seats, which number, in turn, is used as a basis for the distribution of additional seats. As will be discussed, this approach violates the mandate for proportional representation, neglects the principle of "uniform and progressive ratio" adopted by the Constitution, and goes against the republican nature of our State.

Section 5, Article VI of the 1987 Constitution provides the total number of seat allocation for party-list representatives as follows:

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

x x x[3]

Following the numbers mentioned under the 1987 Constitution, the seats allocated for party-list representatives was pegged at 50, being 20% of 250, which is the total number of representatives composing the House of Representatives. The constitutional provision, translated into a mathematical formula, is written as follows:

No. of district representatives

.80

x .20 = No. of party-list representatives[4]

This formulation means that any increase in the number of district representatives, as may be provided by law, will necessarily result in a corresponding increase in the number of party-list seats.[5]

As time went by, districts were re-apportioned, which resulted into the increase in the number of district representatives. With this, a corresponding increase in the number of party-list representatives necessarily followed. For the 2019 National and Local Elections (2019 elections), the number of district representatives was 245. Following the formula, the number of party-list representatives is computed as follows:

245

.80

x .20 = 61.25

Disregarding the fraction of .25, a total of 61 seats were allotted to party-list representatives during the 2019 elections.

On May 22, 2019, the National Board of Canvassers (NBOC) promulgated NBOC Resolution No. 004-195 declaring the winning party-list groups in the May 13, 2019 elections. Based on National Canvass Report No. 86 and adhering to the Court's pronouncement in BANAT, the COMELEC distributed sixty-one (61) congressional seats among the following parties, organizations, and coalitions taking part in the May 13, 2019 party-list election, viz.: [6]

RANK

PARTY-LIST

ACRONYM

VOTES

GARNERED

% OF

TOTAL

VOTES

SEATS

1

ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.

ACT CIS

2,651,987

9.51

3

2

BAYAN MUNA

BAYAN MUNA

1,117,403

4.01

3

3

AKO BICOL POLITICAL PARTY

AKO BICOL

1,049,040

3.76

2

4

CITIZENS BATTLE AGAINST CORRUPTION

CBAC

929,718

3.33

2

5

ALYANSA NG MGA MAMAMAYANG PROBINSIYANO

ANG PROBINSIYANO

770,344

2.76

2

6

ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS

1PACMAN

713,969

2.56

2

7

MARINO SAMAHAN NG MGA SEAMAN, INC.

MARINO

681,448

2.44

2

8

PROBINSYANO AKO

PROBINSYANO AKO

630,435

2.26

2

9

COALITION OF ASSOCIATION OF SENIOR CITIZENS IN THE PHILIPPINES, INC.

SENIOR CITIZENS

516,927

1.85

1

10

MAGKAKASAMA SA SAKAHAN, KAUNLARAN

MAGSASAKA

496,337

1.78

1

11

ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES

APEC

480,874

1.72

1

12

GABRIELA WOMEN'S PARTY

GABRIELA

449,440

1.61

1

13

AN WARAY

AN WARAY

442,090

1.59

1

14

COOPERATIVE NATCCO NETWORK

COOP-NATTCO

417,285

1.5

1

15

ACT TEACHERS

ACT TEACHERS

395,327

1.42

1

16

PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC.

PHILRECA

394,966

1.42

1

17

AKO BISAYA, INC.

AKO BISAYA

394,304

1.41

1

18

TINGOG SINIRANGAN

TINGOG SINIRANGAN

391,211

1.4

1

19

ABONO

ABONO

378,204

1.36

1

20

BUHAY HAYAAN YUMABONG

BUHAY

361,493

1.3

1

21

DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH

DUTERTE YOUTH

354,629

1.27

1

22

KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING

KALINGA

339,655

1.22

1

23

PWERSA NG BAYANING ATLETA

PBA

326,258

1.17

1

24

ALLIANCE OF ORGANIZATIONS, NETWORKS, AND ASSOCIATIONS OF THE PHILIPPINES

ALONA

320,000

1.15

1

25

RURAL ELECTRIC CONSUMERS AND BENEFICIARIES OF DEVELOPMENT AND
ADVANCEMENT, INC.

RECOBODA

318,511

1.14

1

26

BAGONG HENERASYON

BH (BAGONG HENERASYON)

288,752

1.04

1

27

BAHAY PARA SA PAMILYANG PILIPINO, INC.

BAHAY

281,793

1.01

1

28

CONSTRUCTION WORKERS SOLIDARITY

CWS

277,890

1

1

29

ABANG LINGKOD, INC.

ABANG LINGKOD

275,199

0.99

1

30

ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION COOPERATION HARMONY
TOWARDS EDUCATIONAL REFORM

A TEACHER

274,460

0.98

1

31

BARANGAY HEALTH WELLNESS

BHW

269,518

0.97

1

32

SOCIAL AMELIORATION AND GENUINE INTERVENTION ON POVERTY

SAG IP

257,313

0.92

1

33

TRADE UNION CONGRESS PARTY

TUCP

256,059

0.92

1

34

MAGDALO PARA SA PILIPINO

MAGDALO

253,536

0.91

1

35

GALING SA PUSO PARTY

GP

249,484

0.89

1

36

MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION, INC.

MANILA TEACHERS 1

249,416

0.89

1

37

REBOLUSYONARONG ALYANSA MAKABANSA

RAM

238,150

0.85

1

38

ALAGAAN NATIN ATING KALUSUGAN

ANAKALUSUGAN

237,629

0.85

1

39

AKO PADAYON PILIPINO

AKO PADAYON

235,112

0.84

1

40

ANG ASOSASYON SANG MANGUNGUMA NGA BISAYA-OWA MANGUNGUMA, INC.

AAMBIS-OWA

234,552

0.84

1

41

KUSUG TAUSUG

KUSUG TAUSUG

228,224

0.82

1

42

DUMPER PHILIPPINES TAXI DRIVERS ASSOCIATION, INC.

DUMPER PTDA

223,199

0.8

1

43

TALINO AT GALING PILIPINO

TGP

217,525

0.78

1

44

PUBLIC SAFETY ALLIANCE FOR TRANSFORMATION AND RULE OF LAW

PATROL

216,653

0.78

1

45

ANAK MINDANAO

AMIN

212,323

0.76

1

46

AGRICULTURAL SECTOR ALLIANCE OF THE PHILIPPINES

AGAP

208,752

0.75

1

47

LPG MARKETERS ASSOCIATION, INC.

LPGMA

208,219

0.75

1

48

OFW FAMILY CLUB, INC.

OFW FAMILY

200,881

0.72

1

49

KABAUKAT NG MAMAMAYAN

KABAYAN

198,571

0.71

1

50

DEMOCRATIC INDEPENDENT WORKERS ASSOCIATION

DIWA

196,385

0.7

1

51

KABATAAN PARTY LIST

KABATAAN

195,837

0.7

1

The seat allocation was arrived at using the Banat formula that prescribed the following procedure:

1. 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.
2. 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 guaranteed seat each.
3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.
4. Each party, organization, or coalition shall be entitled to not more than three (3) seats.[7]

The first procedure is a necessary requirement in order to determine which of the party-list that participated in the election should be entitled to the limited number of party-list seats allotted by the Constitution. The second and fourth procedures are explicitly provided under R.A. No. 7941, pursuant to the delegation accorded by the Constitution.

As such, while the first, second and fourth procedures may very well find strong moorings under the Constitution and R.A. No. 7941, the third procedure, prescribing the distribution of additional seats, necessitates a second look.

In Banat, the procedure for the distribution of the additional number of seats was explained as follows:

x x x There are two steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats, 38, which is the difference between the 55 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 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 to.[8]

This procedure, while it appears to be a simplified approach, needs a closer examination.

Section 2 of R.A. No. 7941 declares the State policy for the election of party-list representatives, to wit:

Sec. 2. Declaration of Policy. – 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, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.[9]

In applying the system of proportional representation, Sections 11 and 12 of R.A. No. 7941 prescribe the parameters in the distribution of seats for winning party-list representatives as follows:

Section 11. Number of Party-List Representatives. 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.

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.

Under proportional representation, a party's share (percentage) of its seats in the legislature exactly or approximately equals its share of the popular vote nationwide.[10] This concept is mirrored by Section 12 of R.A. No. 7941 when it mandated the distribution of seats in accordance with the percentage of votes obtained by a party in relation to the total nationwide votes cast for the party-list system. This concept of proportional representation is not, however, absolute as it is qualified by the 2% threshold and the 3-seat limit.

A reading of Section 11(b) of R.A. No. 7941 would show that it contains two parts. The first part determines the threshold percentage of votes that a party must obtain to be entitled to a seat, while the second part pertains to the proportional allocation of additional seats based on the total number of votes they obtained.

Petitioners impress upon this Court that this procedure results in the double counting of votes of those parties that garnered 2% of the votes cast for the party-list system. This is because under the second part of Section 11(b), it is still the totality of votes received by a party that is considered in the determination of additional seats of those

parties that garnered 2% of the votes, despite the fact that the equivalent seat of the 2% threshold has already been used in determining a guaranteed seat.

I agree with the petitioners that the existing procedure or the distribution of party-list seats results in double counting; but not on the basis of the second part of Section 11(b). Rather, double counting occurs because of the purpose for which the 2% threshold was utilized.

I do not find the phrase "in proportion to their total number of votes" under the second part of Section 11(b) of R.A. No. 7941 as unconstitutional, when it comes to the distribution of additional seats. Proportional representation, as adopted in our party-list system, seeks an equivalent number of seats based on the total number of votes obtained by a party. Necessarily, whatever seat a party obtains must be the corresponding equivalent of the number of votes it obtained.

The first part of the assailed phrase under Section 11(b) of R.A. No. 7941 must, likewise, be considered, which reads: "That those garnering more than two percent (2%) of the votes x x x." This means that this provision pertains to a procedure for the determination of additional seats of those parties that already qualified for a first seat. Hence, this procedure separates those parties that acquired 2% of the votes from those that did not reach the 2% threshold. There is no violation of the equal protection clause in this case as it simply provides a procedure for determining additional seats whereby priority is given to those parties that reached the 2% threshold. The fact that they are given priority in the distribution of seats is simply a consequence of the Court's pronouncement in *Banat*, because it is no longer just the parties garnering more than 2% of the votes cast that would be entitled to a seat. With the objective of attaining the 20% allocation for party-list representatives, even those garnering less than 2% of the votes cast may be entitled to a seat. In filling up the 20% allocation, the advantage obtained by parties that reached the 2% threshold set by law, must not be bypassed. Thus, there exists a substantial distinction under this provision as the threshold amount determined by law serves to differentiate those that acquired 2% of the votes cast from those that were not able to do so. Ultimately, Section 11(b) of R.A. No. 7941 must be understood to refer to the computation of additional seats of parties that are given priority in the distribution of seats as it speaks of those that garnered more than 2% of the votes cast.

Nevertheless, double counting still occurs because of the purpose for which the 2% threshold was utilized.

In *Banat*, the distribution of additional seats is premised on the determination of the number of remaining available seats. In order to arrive at this number, the number of guaranteed seats are first determined and this is subtracted from the total number of seats allotted by the Constitution. In determining the number of guaranteed seats, *Banat* ranks the parties and places in one group, the parties that garnered at least 2% of the votes cast for the party-list system. Resultantly, the allocation of additional seats becomes dependent on the number of additional seats to be distributed, which in turn is dependent on the number of guaranteed seats.

The problem in this approach lies in the resulting effect wherein the parties obtaining 2% of the votes cast are not actually awarded their first seat in the first round of seat allocation. This is because the 2% threshold is still to be used as a tool to determine the number of guaranteed seats. In doing so, the total seats allotted for party-list representatives are artificially filled with guaranteed seats, but no actual distribution of seats yet occur. This is a violation of the first part of Section 11(b) of R.A. No. 7941, which states "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." This simply means that those obtaining 2% of the total votes cast for the party-list system is entitled to their first seat. Nowhere from the text of the law was it stated that the 2% shall be used for the purpose of determining the number of guaranteed seats. The 2% threshold already provides an equivalent seat that must be definitively allocated.

By using the 2% threshold as a tool to determine the number of guaranteed seats for which the number of additional seats will be computed, the totality of votes of a party that qualified for the threshold are utilized twice: firstly, in the determination of which party is entitled to a guaranteed seat, and secondly, in the determination of the number of guaranteed seats, from which the number of additional seats available, is computed. Looking at them as separate processes, there appears to be no double counting of votes because the use of the totality of votes appears to fulfill different purposes. However, looking at them as part of a whole process, double counting readily reveals itself.

As the Banat formula uses the 2% threshold to determine the number of guaranteed seats, this results into the allocation of a seat that is hung above the totality of seats waiting to be filled. However, this seat does not fall to the vacancy until after the distribution of additional seats. At this stage, the totality of the votes obtained by a party has already been counted and determined to be equivalent to 1 seat. There appears to be no contradiction at this stage. However, in order for the seats to fall down and fill the vacancy, the remaining number of seats must be distributed using the totality of votes obtained by a party. This is where the actual distribution of seats occurs and as this happens, the guaranteed seats that were left hanging would eventually fall down to take their place and add up to the additional seats that a party is entitled to. When the seats add up, the 2% threshold that used the totality of votes and the distribution of the remaining seats available that also used the totality votes, would comprise the 20% seat allocation for party-list representatives. In such a case, double counting of votes clearly occurs.

Double counting of votes violates the republican nature of our State.[11] Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority.[12] The exercise of the right of suffrage which, in the consensus of political philosophers of consequence, is the bedrock of all republican institutions.[13] Indeed, each time the enfranchised citizen goes to the polls to assert this sovereign will, that abiding credo of republicanism is translated into living reality.[14] By not being able to count the votes of the electorate in a proper manner, the composition of the government cannot be said to reflect their will. Republicanism must not simply be understood from the point of view of the exercise of the right to suffrage. The effects of this exercise must, likewise, be felt through the proper appreciation of votes and reflected in the composition of elected government officials.

It must be clarified that the cause of the double counting of votes is not brought about by the use of the total votes in determining the additional seats that a party-list is entitled to. The anomaly lies in the waiting game as to when the 2% threshold would be equated with 1 seat. R.A. No. 7941 expressly provides an equivalency of 2% of votes : 1 seat. This is the ratio that supports the system of proportional representation, and for which the distribution of additional seats must be computed. To simply bypass this ratio after knowing the parties entitled to a seat, and instead use the threshold to determine the number of guaranteed seats, would go against the very electoral system for which representation under the party-list system is anchored.

In proportional representation, the votes obtained by a party must be allotted with a corresponding equivalent seat. Thus, to properly determine the proportion of votes and seats, the best tool to use would be ratio equivalents. Indeed, R.A. No. 7941 already prescribes a ratio of 2% of the total votes cast : 1 seat. It bears emphasis that this serves as an equivalence and not just determines the number of guaranteed seats. Utilizing this ratio mirrors the standard used by the Constitution in the determination of the number of district representatives in a geographic location, which is on the basis of a "uniform and progressive ratio." While said standard makes reference to district representatives, nothing prevents this Court from adopting the said standard in the determination of seats that a party-list can obtain considering that both district and party-list representatives serve as representatives of a particular group of individuals. As such, if a particular population entitles them to one district representative, then

a particular population (as determined by votes) of the marginalized or underrepresented sectors, among all the marginalized or underrepresented sectors, must also entitle them to one representative.

While the 2% threshold entitles a party-list to 1 seat, it does not provide a one-to-one correspondence for each seat that a party-list may be entitled to. This is because a party-list does not need to secure an additional 2% of the votes cast for party-list system in order to obtain a second seat. As illustrated in *Veterans Federation Party v. COMELEC*:^[15]

One proposed formula is to allocate one additional seat for every additional proportion of the votes obtained equivalent to the two percent vote requirement for the first seat. Translated in figures, a party that wins at least six percent of the total votes cast will be entitled to three seats; another party that gets four percent will be entitled to two seats; and one that gets two percent will be entitled to one seat only. This proposal has the advantage of simplicity and ease of comprehension. Problems arise, however, when the parties get very lop-sided votes – for example, when Party A receives 20 percent of the total votes cast; Party B, 10 percent; and Party C, 6 percent. Under the method just described, Party A would be entitled to 10 seats; Party B, to 5 seats and Party C, to 3 seats. Considering the three-seat limit imposed by law, all the parties will each uniformly have three seats only. We would then have the spectacle of a party garnering two or more times the number of votes obtained by another, yet getting the same number of seats as the other one with the much lesser votes. In effect, proportional representation will be contravened and the law rendered nugatory by this suggested solution. Hence, the Court discarded it.^[16]

Indeed, to adopt such an approach would negate the concept of proportional representation. Moreover, it fails to take into consideration the evolving composition of the party-list representatives in the House of Representatives. With this approach, as the seats are filled up, the corresponding threshold percentage to obtain a seat will be stagnant at 2% per seat, despite the decreasing number of available seats as they are filled.

With the 3-seat cap, the 2% threshold, the total votes obtained, and the number of seats to be filled taken into consideration, I propose a formula that would reflect a Philippine style of proportional representation.

As the distribution of seats requires a proportion, it is important to first determine the ratio equivalent for which additional seats may be distributed. The ratio provided by law is 2% of the votes : 1 seat. From this, the next question would be: what is the threshold percentage vote for a party to be entitled to 2 seats? Afterwards, with the 3-seat cap, the question would be: what is the threshold percentage vote for a party to be entitled to 3 seats?

As mentioned, 2% of the votes : 1 seat, as equivalent to 4% of the votes : 2 seats, does not follow proportional representation. This also fails to take into consideration the number of seats allotted for party-list representatives.

To be sure, the ratio equivalent of 2% of the votes : 1 seat means that for a specific seat allocation for party-list representatives, a party must obtain 2% of the votes in order to be entitled to a seat. By using the threshold vote and its equivalent seat, the ratio equivalent is presented from the perspective of filling up a seat. However, looking at the other side of the equation, the ratio equivalent can also be presented from the perspective of the number of seats available to be filled. By taking this perspective, it can be discerned that the ratio of 2% threshold : 1 seat to be filled is actually equivalent to the ratio of 2% threshold : seat allocation/or party-list representatives. With this ratio equivalent, the threshold percentage necessary to be entitled to a second and third seat would be arrived at by using the number of seats available as a variable in the equation. By using this variable, we would be able to arrive at an equivalence whereby as the number of seats are filled, the corresponding threshold percentage for the second and third seats is thereby adjusted accordingly.

By using this approach, the additional number of seats for those garnering more than 2% of the votes cast for the party-list will be determined based on a specific threshold percentage for each additional seat. Throughout the

process, the threshold percentage required to obtain a second and third seat is adjusted based on the remaining number of seats to be filled. The threshold percentage for the first seat and the adjusted threshold percentage for the second seat will then be added to arrive at the percentage vote required for a party to be entitled to two seats. Thereafter, the threshold percentage for entitlement to a third seat will be determined on the basis of the threshold percentage arrived at in order to obtain a second seat. The threshold percentages for entitlement to a first, second and third seat will then be added in order to arrive at the threshold percentage that would entitle a party to 3 seats.

This process prevents double counting of votes because the totality of the votes obtained by a party is utilized only once. Unlike in Banat where it is used to determine the number of guaranteed seats, as well as in the allocation of the remaining seats, this approach definitively allocates the equivalent seat of the total votes obtained by a party. By setting threshold percentages at every stage of seat allocation, the totality of votes obtained by a party will be equated with corresponding seats, and is not utilized for a second time to determine the number of available seats. The determination of threshold percentages will now serve as the yardstick in setting the equivalent of the percentage vote obtained by a party in order to be entitled to additional seats.

Thus, I propose the following procedures for seat allocation of party-list representatives:

1. 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.
2. 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. This first seat shall be allocated to party-list that reached the 2% threshold.
3. The number of seats remaining after the first seat is allocated shall be determined by deducting the number of seats that has been allocated, from the total number of seats allocated for party-list representatives.
4. The distribution of additional seats to parties that obtained more than 2% of the votes cast for the party-list system shall be prioritized based on a threshold percentage.

The threshold percentage to obtain a second seat for the remaining seats shall be computed on the basis of the ratio equivalent of the total number of seats available : 2% threshold. In the 2019 elections, this is 61 seats : 2% threshold. The threshold percentage obtained in this round shall then be added to the 2% threshold in the allocation of a first seat. The parties that obtain the sum threshold percentage will be entitled to 2 seats. The seats will be allocated and the remaining number of seats available will be determined by deducting the totality of seats distributed up to this round, from the total number of seats allocated for party-list representatives.

For the distribution of a third seat for the remaining seats, the threshold percentage shall be computed on the basis of the ratio equivalent of the seats available for allocation of second seats : threshold percentage arrived at in the allocation of second seats. The threshold percentage arrived at in this round shall then be added to the 2% threshold that was used in the allocation of the first seat and the threshold percentage arrived at in the allocation of second seats. The parties that obtain the sum threshold percentage under this round will be entitled to 3 seats. The seats will be allocated and the remaining number of seats available will be determined by deducting the totality of seats distributed up to this round, from the total number of seats allocated for party-list representatives.

5. In the event that the 20% allocation has not yet been filled, the remaining seats shall be distributed in proportion to the votes obtained by a party. For the parties that obtained at least 2% of the votes cast for the party-list, since a fraction of their votes has already been equated with seats by reaching the corresponding threshold percentages, such fraction of their votes should be deducted from their percentage votes in filling up the 20% allocation for party-list representatives. The remaining number of seats shall then be distributed to the parties

that are next in rank until the same are completely filled.

Applying the above proposal, the allocation of the first seat in the 61 seats available for party-list representatives during the 2019 elections, as mentioned in the Decision of this case, shall be as follows:

RANK

PARTY-LIST

ACRONYM

VOTES

GARNERED

% OF

TOTAL

VOTES

SEATS

1

ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.

ACT CIS

2,651,987

9.51

1

2

BAYAN MUNA

BAYAN MUNA

1,117,403

4.01

1

3

AKO BICOL POLITICAL PARTY

AKO BICOL

1,049,040

3.76

1

4

CITIZENS BATTLE AGAINST CORRUPTION

CBAC

929,718

3.33

1

5

ALYANSA NG MGA MAMAMAYANG PROBINSIYANO

ANG PROBINSIYANO

770,344

2.76

1

6

ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS

1PACMAN

713,969

2.56

1

7

MARINO SAMAHAN NG MGA SEAMAN, INC.

MARINO

681,448

2.44

1

8

PROBINSYANO AKO

PROBINSYANO AKO

630,435

2.26

1

Total

8

With this, 8 party-lists are entitled to a first seat. This number shall be deducted from the total number of seats available, which is 61. This results into 53 remaining additional seats.

For the allocation of additional seats, there is a need to determine the percentage threshold needed to qualify for a second seat on the basis of a proportion formula, as follows:

Number of seats available : x% = Total number of seats for the first allocation : 2%

In this formula, the variable "x" represents the threshold percentage that needs to be computed in order to arrive at the percentage of vote that a party must additionally obtain in order to be entitled to a second seat based on the number of seats available. The proportion in this formula, which are the number of seats available and the 2% are called "extremes," while the x% and the total number of seats for the first allocation are called "means."

Considering that the number of seats available has already been determined, which is 53, after the seats of those that obtained 2% of the votes have been deducted from the total number of seats allocated for party-list, then the application of the equation will be as follows:

$$53 \text{ seats} : x\% = 61 \text{ seats} : 2\%$$

Following the computation for a proportion formula, the value of the "means" will have to be transposed and expressed to be multiplied. The same will also have to be done to the "extremes," thereby leading to the following equation:

$$53 \text{ seats} : x\% = 61 \text{ seats} : 2\%$$

$$x\% (61 \text{ seats}) = 2\% (53 \text{ seats})$$

$$x\% (61 \text{ seats}) = .02 (53 \text{ seats})$$

$$x\% (61 \text{ seats}) = 1.06 \text{ seats}$$

As we are looking for the value of "x," we will have to isolate it on one side of the equation. This is done firstly, by dividing the equation with 61 seats in order to cancel the 61 seats that accompany "x%" on the left side of the equation. Afterwards, the % in the variable "x%" will have to be eliminated by converting it into its fractional equivalent and multiplying the equation to 100% to cancel out the% that accompanies the variable "x." The resulting equivalent of "x," which is the threshold percentage for a second seat will then be arrived at as follows:

$$x\% (61 \text{ seats})$$

=

$$1.06 \text{ seats}$$

$$61 \text{ seats}$$

=

$$61 \text{ seats}$$

$$x\%$$

$$=$$
$$.017377$$
$$[x$$
$$=$$
$$.017377]100\%$$
$$100\%$$
$$x (100\%)$$
$$=$$
$$.017377(100\%)$$
$$100\%$$
$$x$$
$$=$$
$$1.7377\%$$

Based on this formula, the threshold percentage for the 53 seats available is arrived at 1.7377%. Adding the 2%

threshold to obtain a first seat, then a party that obtains a total of 3.7377% of votes shall be entitled to 2 seats. The additional seats would then be allocated as follows:

RANK

PARTY-LIST

ACRONYM

VOTES

GARNERED

% OF

TOTAL

VOTES

SEATS

1

ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.

ACT CIS

2,651,987

9.51

2

2

BAYAN MUNA

BAYAN MUNA

1,117,403

4.01

2

3

AKO BICOL POLITICAL PARTY

AKO BICOL

1,049,040

3.76

2

4

CITIZENS BATTLE AGAINST CORRUPTION

CBAC

929,718

3.33

1

5

ALYANSA NG MGA MAMAMAYANG PROBINSIYANO

ANG PROBINSIYANO

770,344

2.76

1

6

ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS

1PACMAN

713,969

2.56

1

7

MARINO SAMAHAN NG MGA SEAMAN, INC.

MARINO

681,448

2.44

1

8

PROBINSYANO AKO

PROBINSYANO AKO

630,435

2.26

1

Total

11

With this, the total number of seats allocated is 11. Deducting this number from 61, the remaining number of seats would be 50. In determining whether any of these parties are entitled to an additional seat, another computation to determine the threshold percentage that would entitle a party to a third seat, is necessary. In doing so, the ratio equivalent to be used in the proportion formula is the ratio arrived at, in the allocation for a second seat, which is

53 seats : 1.7377% threshold. Applying the same method as above described, the computation for a third seat is compressed as follows:

Number of seats available : x% = Total number of seats for the second allocation : 2%

50 seats : x%

=

53 seats : 1.7377%

x% (53 seats)

=

1.7377% (50 seats)

53 seats

=

53 seats

[x

=

0.016393]100%

100%

x

=

1.6393%

The threshold percentage for the 50 seats available is thus 1.6393%. By adding it with the 2% threshold for the first seat, and the 1.7377% threshold for the second seat, a party that obtains a total of 5.377% shall be entitled to 3 seats. The seats are then allocated as follows:

RANK

PARTY-LIST

ACRONYM

VOTES

GARNERED

% OF

TOTAL

VOTES

SEATS

1

ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.

ACT CIS

2,651,987

9.51

3

2

BAYAN MUNA

BAYAN MUNA

1,117,403

4.01

2

3

AKO BICOL POLITICAL PARTY

AKO BICOL

1,049,040

3.76

2

4

CITIZENS BATTLE AGAINST CORRUPTION

CBAC

929,718

3.33

1

5

ALYANSA NG MGA MAMAMAYANG PROBINSIYANO

ANG PROBINSIYANO

770,344

2.76

1

6

ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS

1PACMAN

713,969

2.56

1

7

MARINO SAMAHAN NG MGA SEAMAN, INC.

MARINO

681,448

2.44

1

8

PROBINSYANO AKO

PROBINSYANO AKO

630,435

2.26

1

TOTAL

12

By using this formula, the seats for those garnering at least 2% of the votes can already be allocated. Rather than using the 2% threshold to determine the number of guaranteed seats, which number in turn, will be used for the distribution of additional seats, it is now being applied and used as a basis for proportionately determining the allocation of additional seats. As such, each percentage of vote is equated with a corresponding proportion for the allocation of additional seats. This is consistent with the mandate of Section 12 of R.A. No. 7941 that allocation of seats should be done "proportionately according to the percentage of votes obtained by each party x x x."

The formula, thus, presents a definitive proportional seat allocation both for the first seat of those garnering 2% of the votes, and for the additional seats of those garnering more than 2% of the votes. Thus, for the 2019 elections, those obtaining 2% of the votes shall be entitled to 1 seat, those obtaining 3.7377% of the votes are entitled to two seats and those obtaining 5.377% are entitled to 3 seats.

Proceeding further, after determining the additional seats allocated to parties who obtained the 2% threshold, the remaining number of seats would be 49, which is the difference between the total number of seats reserved for party-list representatives, which is 61, and the allocated seats, which is 12. The 49 seats should then be filled by allocating the remaining seats to the party next in rank, until all the seats are completely filled.

It bears noting that in using the 2% threshold as the source in determining the allocation for the second and third seats, the votes obtained by a party, in relation to the total number of votes in the party-list, have already been considered. Consequently, as the percentage votes of parties that garnered at least 2% of the votes cast for the party-list system has already been allocated with their corresponding seat equivalents, the corresponding percentage votes that entitled them to these seats should already be deducted when it comes to filling up the remaining number of seats reserved for party-list representatives. This must be so because Section 12 of R.A. No. 7941 speaks of proportion according to the percentage of votes obtained by a party. As there has already been an allocation of seats in the portion of the percentage of votes obtained by a party, the proportion should now be based on the remaining percentage of votes that should be allocated to fill the remaining number of seats available.

After determining their rank, the seats reserved for party-list representatives will result in the following distribution of seats:

RANK

PARTY-LIST

ACRONYM

VOTES

GARNERED

% OF

TOTAL

VOTES

SEATS

1

ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.

ACT CIS

2,651,987

$9.51 - 5.377\% = 4.133\%$

3 (seat cap)

2

BAYAN MUNA

BAYAN MUNA

1,117,403

$4.01 - 3.7377 = .2723$

2

3

AKO BICOL POLITICAL PARTY

AKO BICOL

1,049,040

$3.76 - 3.7377 = .0223$

2

4

CITIZENS BATTLE AGAINST CORRUPTION

CBAC

929,718

$3.33 - 2 = 1.33$

$1 + 1 = 2$

5

ALYANSA NG MGA MAMAMAYANG PROBINSIYANO

ANG PROBINSIYANO

770,344

$2.76 - 2 = .76$

$1 + 1 = 2$

6

ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS

1PACMAN

713,969

$2.56 - 2 = .56$

1

7

MARINO SAMAHAN NG MGA SEAMAN, INC.

MARINO

681,448

$2.44 - 2 = .44$

1

8

PROBINSYANO AKO

PROBINSYANO AKO

630,435

$2.26 - 2 = .26$

1

9

COALITION OF ASSOCIATION OF SENIOR CITIZENS IN THE PHILIPPINES, INC.

SENIOR CITIZENS

516,927

1.85

1

10

MAGKAKASAMA SA SAKAHAN, KAUNLARAN

MAGSASAKA

496,337

1.78

1

11

ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES

APEC

480,874

1.72

1

12

GABRIELA WOMEN'S PARTY

GABRIELA

449,440

1.61

1

13

AN WARAY

AN WARAY

442,090

1.59

1

14

COOPERATIVE NATCCO NETWORK

COOP-NATTCO

417,285

1.5

1

15

ACT TEACHERS

ACT TEACHERS

395,327

1.42

1

16

PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC.

PHILRECA

394,966

1.42

1

17

AKO BISAYA, INC.

AKO BISAYA

394,304

1.41

1

18

TINGOG SINIRANGAN

TINGOG SINIRANGAN

391,211

1.4

1

19

ABONO

ABONO

378,204

1.36

1

20

BUHAY HAYAAN YUMABONG

BUHAY

361,493

1.3

1

21

DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH

DUTERTE YOUTH

354,629

1.27

1

22

KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING

KALINGA

339,655

1.22

1

23

PWERSA NG BAYANING ATLETA

PBA

326,258

1.17

1

24

ALLIANCE OF ORGANIZATIONS, NETWORKS, AND ASSOCIATIONS OF THE PHILIPPINES

ALONA

320,000

1.15

1

25

RURAL ELECTRIC CONSUMERS AND BENEFICIARIES OF DEVELOPMENT AND
ADVANCEMENT, INC.

RECOBODA

318,511

1.14

1

26

BAGONG HENERASYON

BH (BAGONG HENERASYON)

288,752

1.04

1

27

BAHAY PARA SA PAMILYANG PILIPINO, INC.

BAHAY

281,793

1.01

1

28

CONSTRUCTION WORKERS SOLIDARITY

CWS

277,890

1

1

29

ABANG LINGKOD, INC.

ABANG LINGKOD

275,199

0.99

1

30

ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION COOPERATION HARMONY
TOWARDS EDUCATIONAL REFORM

A TEACHER

274,460

0.98

1

31

BARANGAY HEALTH WELLNESS

BHW

269,518

0.97

1

32

SOCIAL AMELIORATION AND GENUINE INTERVENTION ON POVERTY

SAGIP

257,313

0.92

1

33

TRADE UNION CONGRESS PARTY

TUCP

256,059

0.92

1

34

MAGDALO PARA SA PILIPINO

MAGDALO

253,536

0.91

1

35

GALING SA PUSO PARTY

GP

249,484

0.89

1

36

MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION, INC.

MANILA TEACHERS 1

249,416

0.89

1

37

REBOLUSYONARONG ALYANSA MAKABANSA

RAM

238,150

0.85

1

38

ALAGAAN NATIN ATING KALUSUGAN

ANAKALUSUGAN

237,629

0.85

1

39

AKO PADAYON PILIPINO

AKO PADAYON

235,112

0.84

1

40

ANG ASOSASYON SANG MANGUNGUMA NGA BISAYA-OWA MANGUNGUMA, INC.

AAMBIS-OWA

234,552

0.84

1

41

KUSUG TAUSUG

KUSUG TAUSUG

228,224

0.82

1

42

DUMPER PHILIPPINES TAXI DRIVERS ASSOCIATION, INC.

DUMPER PTDA

223,199

0.8

1

43

TALINO AT GALING PILIPINO

TGP

217,525

0.78

1

44

PUBLIC SAFETY ALLIANCE FOR TRANSFORMATION AND RULE OF LAW

PATROL

216,653

0.78

1

45

ANAK MINDANAO

AMIN

212,323

0.76

1

46

AGRICULTURAL SECTOR ALLIANCE OF THE PHILIPPINES

AGAP

208,752

0.75

1

47

LPG MARKETERS ASSOCIATION, INC.

LPGMA

208,219

0.75

1

48

OFW FAMILY CLUB, INC.

OFW FAMILY

200,881

0.72

1

49

KABAUKAT NG MAMAMAYAN

KABAYAN

198,571

0.71

1

50

DEMOCRATIC INDEPENDENT WORKERS ASSOCIATION

DIWA

196,385

0.7

1

51

KABATAAN PARTY LIST

KABATAAN

195,837

0.7

1

52

AKSYON MAGSASAKA - PARTIDO TINIG NG MASA

AKMA-PTM

191,804

0.69

1

53

SERBISYO SA BAYAN PARTY

SBP

180,535

0.65

1

54

ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC.

ANGKLA

179,909

0.65

1

55

AKBAYAN CITIZENS ACTION PARTY

AKBAYAN

173,356

0.62

1

Total

61

In this round, CBAC and ANG PROBINSYANO obtained an additional seat each, since the difference, after deducting the threshold percentage that entitled them to a seat from the percentage votes they received, which is 1.33% and .76%, is high enough in the ranking of percentage votes throughout the process of filling up the entire allocation of 61 seats allotted to party-list representatives.

With this formula, AKMA-PTM, SBP, ANGKLA and AKBAYAN are entitled to 1 seat each. Resultantly, this formula opens for more representation in the party-list system, as more sectors will be represented in the House of Representatives. Moreover, by using ratio equivalents and anchoring the computation based on proportion, the threshold percentage for a second and third seat is specifically determined in the same manner that a first seat is awarded based on a specific threshold percentage. As the seats are filled and adjusted, so is the threshold percentage for additional seats. Given the limited number of seats allocated for party-list representatives, it is more in keeping with the principle of proportional representation, to adopt a formula whereby a change in the number of seats available should also result in the corresponding change in the threshold percentage that would entitle a party to a seat. This would also result in having a progressive ratio in the allocation of seats based on the votes obtained by a party.

As demonstrated, the proposed formula avoids the double counting of votes, adheres to the principle of

proportional representation as embodied in the law, and prescribes a uniform and progressive ratio in the allocation of seats.

IN VIEW OF THE FOREGOING, I vote to grant the motion for reconsideration and set aside NBOC Resolution No. 004-195 for being a product of double counting of votes of parties that garnered at least 2% of the votes cast for the party-list. The cause of the double counting of votes, which is the treatment of the 2% threshold as a tool to determine the number of guaranteed seats, which number will be used in the distribution of additional seats, is unconstitutional.

[1] AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR, March 3, 1995.

[2] Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections, 604 Phil. 131 (2009).

[3] Emphasis supplied.

[4] Veterans Federation Party v. Commission on Elections, 396 Phil. 419, 436 (2000).

[5] Id.

[6] ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. v. Commission on Elections, G.R. No. 246816, September 15, 2020.

[7] Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections, *supra* note 2, at 162.

[8] Id. at 163.

[9] Emphasis supplied.

[10] Sodaro, Michael, (2001). Comparative Politics: A Global Introduction. New York: McGrawHill, p. 208.

[11] Art. II, Sec. 1 of the Constitution provides:

SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

[12] Moya v. Del Fierro, 69 Phil. 199, 204 (1939).

[13] See People v. San Juan, 130 Phil. 515, 522 (1968).

[14] Id.

[15] *Supra* note 4.

[16] Id. at 443.

SEPARATE CONCURRING AND DISSENTING OPINION

DIMAAMPAO, J.:

In fealty to its judicial duty, this Court in the case of *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections (COMELEC)*,^[1] laid down doctrinal mooring which has its textual hook in Section 11(b) of Republic Act (R.A.) No. 7941, viz.:

Section 11. Number of Party-List Representatives. x x x

(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."

Dubbed as the BANAT Formula, the jurisprudential precept ordains—

Round 1:

- The participating parties, organizations or coalitions shall be ranked from highest to lowest based on the number of votes they each garnered in the party-list election.
- Each of those receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to and guaranteed one seat each.

Round 2, Part 1:

- The percentage of votes garnered by each of the parties, organizations and coalitions is multiplied by the remaining available seats after Round 1. All party-list participants shall participate in this round regardless of the percentage of votes they garnered.
- The party-list participants shall be entitled to additional seats based on the product arrived at in (a). The whole integer of the product corresponds to a party's share in the remaining available seats. Fractional seats shall not be awarded.
- A party-list shall not be awarded no more than two additional seats.

Round 2, Part 2:

- The party-list party, organization or coalition next in rank shall be allocated one additional seat each until all available seats are completely distributed.^[2]

In the case at bench, the petitioners impugned the constitutionality of Section 11(b) of RA 7941 particularly the portion which provides that those garnering more than two percent (2%) of the votes cast for the party list system shall be entitled to additional seats in Round 2 in proportion to their total number of votes. As it happened, this Court sustained the constitutionality of the assailed provision.

Taking umbrage at the Court's disposition, petitioners intransigently assert via the present Motion for Reconsideration that such manner of allocating additional seats violates the "one person, one vote" policy protected under the equal protection clause and our democratic institutions.

I concur with the ponente's denial of the Petitioners' Motion for Reconsideration.

As clearly elucidated in the ponencia, there is no double-counting of votes under the BANAT Formula since the system of counting pertains to two different rounds and for two different purposes.^[3] Each party-list earns a seat as it hurdles the threshold in each round. However, each vote is counted only once for both rounds.

It cannot be stressed enough that in Round 2, Part 1, all the votes garnered by the two-percenters are considered in the computation not to count them anew but only to give flesh to the principle of proportionality as laid down in Section 11 (b) of RA No. 7941. To deduct the votes amounting to 2% from the total votes of the party-list groups that have been entitled to and given guaranteed seats before they could participate in Round 2, Part 1, would run roughshod over the ratio decidendi of the principle of proportionality.

Be that as it may, I humbly opine that the allocation of additional seat in Round 2, Part 2 of the BANAT Formula deserves a second hard look. Since the seats are allocated to party-list party, organization or coalition which are next in rank, they received their proportionate share in the remaining seats through the percentage of their votes after computation is less than one, i.e., in fraction. This being so, I join Justice Mario Lopez in his separate opinion wherein he brought to the fore the inaccuracy of the BANAT Formula in Round 2, Part 2 of the party-list seat allocation.

In explication, I proffer the following postulations.

The table below evinces the seats allocated to parties, organizations, and coalitions using the BANAT Formula in the 2019 elections:

	RANK
	ACRONYM
% OF TOTAL VOTES	
SEATS IN ROUND 1[4]	
PROPORTIONATE SHARE IN REMAINING SEATS	
SEATS IN ROUND 2, PART 1[5]	
SEATS IN ROUND 2, PART 2	
TOTAL SEATS	
1	
	ACT-CIS
9.51%	
1	
5.0403	
2	
0	
3	
2	

BAYAN MUNA

4.01%

1

2.1253

2

0

3

3

AKO BICOL

3.76%

1

1.9928

1

0

2

4

CBAC

3.33%

1

1.7490

1

0

2

5

ANG PROBINSIYANO

2.76%

1

1.4628

1

0

2

6

1PACMAN

2.56%

1

1.3568

1

0

2

7

MARINO

2.44%

1

1.2932

1

0

2

8

PROBINSYANO AKO

2.26%

1

1.1978

1

0

2

9

SENIOR CITIZENS

1.85%

0

0.9805

0

1

1

10

MAGSASAKA

1.78%

0

0.9434

0

1

1

11

APEC

1.72%

0

0.9116

0

1

1

12

GABRIELA

1.61%

0

0.8533

0

1

1

13

AN WARAY

1.59%

0

0.8427

0

1

1

14

COOP-NATTCO

1.50%

0

0.7950

0

1

1

15

ACT TEACHERS

1.42%

0

0.7526

0

1

1

16

PHILRECA

1.42%

0

0.7526

0

1

1
17

AKO BISAYA

1.41%
0
0.7473
0
1
1
18

TINGOG SINIRANGAN

1.40%
0
0.7420
0
1
1
19

ABONO

1.36%
0
0.7208
0
1
1
20

BUHAY

1.30%
0
0.6890

0

1

1

21

DUTERTE YOUTH

1.27%

0

0.6731

0

1

1

22

KALINGA

1.22%

0

0.6466

0

1

1

23

PBA

1.17%

0

0.6201

0

1

1

24

ALONA

1.15%

0

0.6095

0

1

1

25

RECOBODA

1.14%

0

0.6042

0

1

1

26

BH (BAGONG HENERASYON)

1.04%

0

0.5512

0

1

1

27

BAHAY

1.01%

0

0.5353

0

1

1

28

CWS

1.00%

0

0.5300

0

1

1

29

ABANG LINGKOD

0.99%

0

0.5247

0

1

1

30

A TEACHER

0.98%

0

0.5194

0

1

1

31

BHW

0.97%

0

0.5141

0

1

1

32

SAGIP

0.92%

0

0.4876

0

1

1

33

TUCP

0.92%

0

0.4876

0

1

1

34

MAGDALO

0.91%

0

0.4823

0

1

1

35

GP

0.89%

0

0.4717

0

1

1

36

MANILA TEACHERS'

0.89%

0

0.4717

0

1

1

37

RAM

0.85%

0

0.4505

0

1

1

38

ANAKALUSUGAN

0.85%

0

0.4505

0

1

1

39

AKO PADAYON

0.84%

0

0.4452

0

1

1

40

AAMBIS-OWA

0.84%

0

0.4452

0

1

1

41

KUSUG TAUSUG

0.82%

0

0.4346

0

1

1

42

DUMPER PTDA

0.80%

0

0.4240

0

1

1

43

TGP

0.78%

0

0.4134

0

1

1

44

PATROL

0.78%

0

0.4134

0

1

1

45

AMIN

0.76%

0

0.4028

0

1

1

46

AGAP

0.75%

0

0.3975

0

1

1

47

LPGMA

0.75%

0

0.3975

0

1

1

48

OFW FAMILY

0.72%

0

0.3816

0

1

1

49

KABAYAN

0.71%

0

0.3763

0

1

1

50

DIWA

0.70%

0

0.3710

0

1

1

51

KABATAAN

0.70%

0

0.3710

0

1

1

Under the BANAT Formula, only the whole integer is considered with respect to the proportionate share in the remaining seats of AKO BICOL, CBAC, ANG PROBINSYANO, PACMAN, MARINO, and PROBINSYANO AKO, in the absence of a provision allowing the rounding-off of fractional seats. All the same, for Round 2, Part 2 of the party-list seat allocations, one seat is allocated to each party next in rank, i.e., those with a product[6] of less than one, until all seats are completely distributed.

Inevitably, this results in a preposterous situation in that the aforesaid six parties with a product of more than one but with fractional seats as represented by the decimal values were precluded from participating in Round 2, Part 2 of the seat allocation even though they have not breached the three- seat limit, while the others with only fractional seats as represented by decimal values were considered and in fact were allotted seats. Simply put, fractional seats were not awarded for the six parties, whereas parties next in rank were granted therefor.

Quite palpably, such distribution is antithetical to the principle of proportionality required by the law. This could have been avoided if the Niemeyer Formula as proposed by Justice M. Lopez was uniformly applied to all the parties in determining which parties are next in rank for the allocation of the last remaining seats. For the 2019 party-list seat allocations, this would have resulted in AKO BICOL, CBAC, and ANG PROBINSYANO receiving a total of three party-list seats each. The remaining party-list seats would have been allocated in this wise:

ACRONYM

Remaining
Fractional
Seat
(applying the
Niemeyer
Formula)

Ranking
Under
BANAT
Formula

Ranking
applying the
Niemeyer
Formula

Seats from
Previous
Allocation[7]

Round 2,
Part 2 Seat
Allocation

Total
Seats

AKO BICOL

0.9928

3

1

2

1

3

SENIOR CITIZENS

0.9805

9

2

0

1

1

MAGSASAKA

0.9434

10

3

0

1

1

APEC

0.9116

11

4

0

1

1

GABRIELA

0.8533

12

5

0

1

1

AN WARAY

0.8427

13

6

0

1

1

COOP-NATTCO

0.795

14

7

0

1

1

CBAC

0.749

4

8

2

1

3

ACT TEACHERS

0.7526

15

9

0

1

1

PHILRECA

0.7526

16

10

0

1

1

AKO BISAYA

0.7473

17

11

0

1

1

TINGOG SINIRANGAN

0.742

18

12

0

1

1

ABONO

0.7208

19

13

0

1

1

BUHAY

0.689

20

14

0

1

1

DUTERTE YOUTH

0.6731

21

15

0

1

1

KALINGA

0.6466

22

16

0

1

1

PBA

0.6201

23

17

0

1

1

ALONA

0.6095

24

18

0

1

1

RECOBODA

0.6042

25

19

0

1

1

BH (BAGONG HENERASYON)

0.5512

26

20

0

1

1

BAHAY

0.5353

27

21

0

1

1

CWS

0.53

28

22

0

1

1

ABANG LINGKOD

0.5247

29

23

0

1

1

A TEACHER

0.5194

30

24

0

1

1

BHW

0.5141

31

25

0

1

1

SAGIP

0.4876

32

26

0

1

1

TUCP

0.4876

33

27

0

1

1

MAGDALO

0.4823

34

28

0

1

1

GP

0.4717

35

29

0

1

1

MANILA TEACHERS'

0.4717

36

30

0

1

1

ANG PROBINSYANO

0.4628

5

31

2

1

3

RAM

0.4505

37

32

0

1

1

ANAKALUSUGAN

0.4505

38

33

0

1

1

AKO PADAYON

0.4452

39

34

0

1

1

AAMBIS-OWA

0.4452

40

35

0

1

1

KUSUG TAUSUG

0.4346

41

36

0

1

1

DUMPER PTDA

0.424

42

37

0

1

1

TGP

0.4134

43

38

0

1

1

PATROL

0.4134

44

39

0

1

1

AMIN

0.4028

45

40

0

1

1

AGAP

0.3975

46

41

0

1

1

LPGMA

0.3975

47

42

0

1

1

OFW FAMILY

0.3816

48

43

0

1

1

IN LIGHT OF THE FOREGOING, I concur with the dismissal of the Motion for Reconsideration. As adumbrated above, I join Justice M. Lopez in his submission to revisit the treatment of fractional seats in obeisance to the principle of proportionality. In so doing, this Court merely corrects the application of the BANAT Formula without encroaching upon the powers of the legislature.

[1] G.R. No. 179271, 21 April 2009.

[2] G.R. No. 246816, 15 September 2020.

[3] Round 1 is for purposes of applying the 2% threshold and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while Round 2 is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected via a party-list system, thus, seats are computed in proportion to a party-list's total number of votes.

[4] Guaranteed seats based on the 2% threshold.

[5] The greatest number of seats that can be allocated in Round 2, Part 1 is two seats in view of the three-seat cap.

[6] Or the proportionate share in the remaining seats; refers to the product of the party's percentage of the total party-list vote and remaining available seats.

[7] Refers to total seats allocated to the party-list in Round 1 and Round 2, Part 1.

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