

GLENN QUINTOS ALBANO, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 257610. January 24, 2023

Ponente: LOPEZ, J., J.

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LOPEZ, J., J.:

Consistent with the intent of the Constitution, Congress is empowered to craft legislation providing for the mechanics of the party-list system, and with it, the qualifications of those selected by the party-lists as its respective nominees. However, when such legislation proves to be an affront to the equal protection clause, it must nevertheless be struck down and declared unconstitutional.

Before this Court are two consolidated Petitions for Certiorari and Prohibition[1] assailing Section 8 of Republic Act No. 7941[2] (R.A. No. 7941) and Sections 5(d) and 10 of Commission on Elections (COMELEC) Resolution No. 10717[3] as unconstitutional for adding to the minimum qualifications set forth for party-list representatives and for being violative of the equal protection clause under the 1987 Constitution.

The Antecedents

Glenn Quintos Albano (Albano) was the second nominee of the sectoral party Talino at Galing ng Pinoy Party-List (TGP) for the May 9, 2022 national elections.[4] He alleged that he is a natural born Filipino citizen and a resident of the Philippines since birth. He further claimed to be a registered voter, above 25 years old, able to read and write, and has been a member in good standing of the Philippine Bar with 15 years of legal practice and experience. Prior to his nomination, Albano ran for city councilor for the City of Taguig during the 2019 elections and lost.[5] Thereafter, he continued to serve TGP as the Chief Political Affairs Officer and its Chief of Staff.[6]

In the 2022 elections, Albano's loss in the previous 2019 elections rendered him ineligible to participate therein as the second nominee of TGP, pursuant to the restrictions imposed by Section 8 of R.A. No. 7941 and, consequently, by Sections 5(d) and 10 of COMELEC Resolution No. 10717.

As a parallel development, Catalina G. Leonen-Pizarro (Pizarro) is the current president and the first nominee in the 2022 elections of the Arts Business and Science Professionals (ABS), a sectoral party she founded in 2007. Previously, she served as the representative of ABS in the House of Representatives (House) for three consecutive terms, from 2007 to 2016.[7] After completing her term, she ran for mayor in the Municipality of Sudipen, La Union in the 2016 and 2019 elections, but failed in her bid both times.[8]

Despite her selection as first nominee for the 2022 elections, Pizarro's bid was also hampered by the promulgation of COMELEC Resolution No. 10717 and the media pronouncement of the COMELEC, preventing defeated candidates in the 2019 elections from eyeing a political comeback through the party-list system in the House of Representatives.[9]

Seeking recourse with this Court, Pizarro and Albano separately filed Petitions for Certiorari and Prohibition,

docketed as UDK No. 17230 and G.R. No. 257610, respectively, to declare Section 8 of R.A. No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717 unconstitutional.

For context, the challenged provision under R.A. No. 7941 prevents a candidate for any elective office or a person who has lost in the immediately preceding elections from being included in the list of nominees for party-list representatives. Section 8 reads as follows:

SECTION 8. Nomination of Party-List Representatives. – Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5) from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned.

Section 8 was eventually adopted in the also challenged Sections 5(d) and 10 of COMELEC Resolution No. 10717, which provides:

SECTION 5. Contents and Form of the Certificate of Nomination. – The Certificate of Nomination of a PP, sectoral party, organization or Coalition shall contain the following:

- Name of the PP, sectoral party, organization or Coalition;
- Name of the Chairperson/President/Secretary-General of the nominating PP, sectoral party, organization or Coalition;
- Name and Address of all the nominees;
- A certification that the nominees have all the qualifications and none of the disqualifications provided by law and that they are not candidates for any elective office or have lost in their bid for an elective office in the May 13, 2019 National and Local Elections;
- A documentary stamp in the amount of Thirty Pesos (Php30.00);
- The signature and attestation under oath, either by the Chairperson, President, Secretary-General or any other duly authorized officer of the nominating PP, sectoral party, organization or coalition. x x x

x x x x

SECTION 10. Nomination of Party-List Representatives. – A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the May 13, 2019 National and Local Elections. No change of names or alterations of the order of nominees shall be allowed after the same shall have been submitted to the Commission except in cases where the nominee dies, becomes incapacitated, or there is valid withdrawal and substitution of nominees as provided in the succeeding sections, in which case, the name of the substitute nominee shall be placed last in the list.

Considering the identity of facts and issues, the instant petitions were consolidated via a Resolution[10] dated August 23, 2022.

Issues

The pivotal issues raised in the consolidated petitions are:

I.

Whether Congress may prescribe additional qualifications other than what is provided in Section 6, Article VI of the 1987 Constitution; and

II.

Whether Section 8 of R.A. No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717 are unconstitutional for violating the equal protection clause of the 1987 Constitution.[11]

This Court's Ruling

The petitions are partly meritorious.

Congress is empowered to determine, by law, who shall be elected through the party--list system and, therefore, determine the qualifications of the party-list representatives elected under this system.

In essence, petitioners insist that Section 8 of R.A. No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717 illegally imposes an additional qualification on party-list aspirants. They maintain that a candidate for a member of the House of Representatives needs only to meet the qualifications set forth in Section 6,[12] Article VI of the 1987 Constitution. Beyond such qualifications, candidates need not possess any other qualification to be voted upon and elected.[13] Consequently, the act of Congress in adding another requirement by law effectively amends the 1987 Constitution, which Congress has no power to do, following the ruling in *Social Justice Society (SJS) v. Dangerous Drugs Board, et al. (Social Justice Society)*. [14]

In its Comment[15] in G.R. No. 257610, the Office of the Solicitor General (OSG) asserts that Congress merely acted in compliance with and by authority of the express wording of Section 5(1) of the 1987 Constitution in imposing such additional qualifications under R.A. No. 7941.[16] Effectually, there was no grave abuse of discretion on the part of the respondent in the issuance of COMELEC Resolution No. 10717, having acted upon a valid statutory provision, pursuant to its constitutional mandate to enforce and administer all laws and regulations relative to the conduct of an election.[17] The OSG adds in its Comment in UDK No. 17230[18] that the inclusion of additional requirements for party-list representatives was a valid exercise of the plenary power of Congress, which includes the authority to prescribe qualifications for public office.[19]

This Court agrees with the respondent.

To begin with, the party-list system was innovated to serve as a tool for the attainment of social justice. The deliberations of the members of the Constitutional Commission reflect that the purpose of the party-list system was to give "genuine power to our people" and that the inclusion of such a mechanism in the Constitution symbolizes a "new chapter to our national history." [20] As elaborated in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections (Bagong Bayani)*, [21] the party-list system, in its noblest sense, "intends to make the marginalized and the underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of representative democracy." [22]

The party-list system finds its mooring in the 1987 Constitution. Party-list organizations that garner a sufficient number of votes shall form part of the House through their chosen nominees. Section 5(1), Article VI reads:

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.

Aside from distinctly defining the composition of the House, the last phrase of the provision simultaneously empowers the legislature to formulate the allocation of party-list seats for winning party-list organizations. This was the Court's interpretation in *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*,^[23] to wit:

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.^[24]

In *Abayon v. House of Representatives Electoral Tribunal*,^[25] this Court clarified that while it is the party-list organization that is being voted upon by the electorate, it is not the organization, but the individual who eventually sits as and becomes a member of the House:^[26]

Clearly, the members of the House of Representatives are of two kinds: "members x x x who shall be elected from legislative districts" and "those who x x x shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations." This means that, from the Constitution's point of view, it is the party-list representatives who are "elected" into office, not their parties or organizations. These representatives are elected, however, through that peculiar party-list system that the Constitution authorized and that Congress by law established where the voters cast their votes for the organizations or parties to which such party-list representatives belong.^[27]

Guided by the foregoing, Section 5(1), Article VI of the Constitution is more appropriately understood to mean that the allocation of party-list seats pertains to party-list representatives, who act for and on behalf of their respective organizations. Elsewise stated, the allocation of party-list seats to party-list representatives, specifically as to "who shall be elected" through a party-list system, pertains not only to the party-list organization but also to the party-list representative, who shall eventually sit as a member of the House.

Ultimately then, the issue as to "who shall be elected" as provided in the last phrase of Section 5(1), Article VI has been delegated to Congress—for in order to answer the question as to "who shall be elected," it is not only the number of party-list representatives who would occupy the house that must be considered; the qualifications of those who seek such positions are also embraced therein.

A review of the deliberations of Section 5(1), Article VI of the Constitutional Commission would reveal the clear intent of the framers to delegate to Congress, who is in the best position to draft, study, and enact all the details regarding the implementation of the party-list system, the determination of the qualifications of nominees of the party-list system, viz.:

MR. RODRIGO. x x x In the light of the phrase "AS PROVIDED BY LAW," do I take it that this party list system and the sectoral representation provision will not take effect until an enabling act or an implementing legislation shall have been enacted by Congress?

MR. MONSOD. Madam President, the first Assembly will be in March or April. But when we say, "AS PROVIDED BY LAW," it could really mean that it may be by ordinance appended to this [C]onstitution or an executive order by the incumbent President or, as the Gentlemen has said, by law provided by the incoming Congress. So, it could be any of these ways.

MR. RODRIGO. Madam President, we are all witnesses to the difficulty in arriving at a consensus of these

very novel ideas on the disputes that we have had. And up to now, there is no real consensus yet. Does the Commissioner believe that we should really try to go into the details by enacting an ordinance to the Constitution? x x x

MR. MONSOD. We just want to establish the principle of the party list system with sectoral representation in the present Constitution. x x x

MR. RODRIGO. Considering our time constraint and the many other provisions that we have not yet discussed, does the Commissioner believe that we are in a position to draft, study, and enact a virtual piece of legislation, with all details, regarding the implementation of this party--list system and sectoral representation, so that it will be finished in time for the approval of this Constitution? Should we not abandon that idea and leave this matter to the legislature?

MR. MONSOD. I believe that it is really not a very complicated system, and it is possible. But I will yield to the time problem, if there is really a time problem. Certainly, I do not think that this Commission would want to put an ordinance that is half-baked.[28] (Emphases supplied)

As aptly observed by Associate Justice Alfredo Benjamin S. Caguioa:

x x x [T]he framers' penultimate goal is to have a system of party-list system. With respect, however, to the details as of its implementation, the same was envisioned to be appended to the Constitution or, in the alternative, to be enacted by the President or the legislature. This evinces the intent of the framers to delegate the broad power of formulating rules operationalizing the party-list system, in the event that the same could not be made part of the Constitution.[29]

In obeisance to Section 5(1), Article VI of the 1987 Constitution, particularly the phrase "as provided by law," Congress enacted R.A. No. 7941. This Court, in *Bagong Bayani*, explained that such phrase, in relation to the party-list system, is categorical in its terms: "the mechanics of the [party-list] system shall be provided by law. Pursuant thereto, Congress enacted [R.A.] No. 7941. In understanding and implementing party-list representation, [W]e should[,] therefore[,] look at the law first." [30]

The law has, for its end, the guarantee of a "full, free, and open party system in order to attain the broadest possible representation of party, sectoral, or group interests in the House by enhancing their chances to complete for and win seats in the legislature and shall provide the simplest scheme possible." [31]

Aside from the determination of the mechanics of the party-list system, R.A. No. 7941 streamlined the qualifications of party-list nominees. This was plainly articulated during the law's congressional deliberations, viz.:

What does the Constitution say? The Constitution did not specifically direct that all registered political parties should be allowed to participate in the Party-List system from the outset. What the Constitution provides is, I quote – "Those who, as provided by law shall be elected through a party-list system of registered national, regional and sectoral parties or organizations."

Under the foregoing provision, Congress is given the plenary power to legislate on who shall be qualified to be elected under the party-list system and which national, regional, and sectoral parties or organizations are eligible for registration.[32]

In view of these disquisitions, nothing appears to be constitutionally repugnant with R.A. No. 7941, insofar as it embodies the objective of the Constitution to accord Congress imprimatur to sculpt legislation establishing the mechanics of the party-list system, and with it, the qualifications of party--list representatives and the conduct for their nominations. In line with this and to ensure genuine representation, R.A. No. 7941 even requires, as a qualification for party-list nominees, that [they] be bona fide members of the party or organization which [they]

seek to represent for at least 90 days preceding the day of the election.[33] To be sure, this Court has since acknowledged R.A. No. 7941 as the "controlling law" in all matters pertaining to the elections of party-list representatives.[34] After all, the opportunity to run for public office is a privilege that may be subject to limitations as imposed by law.[35]

Finally, the instant case must be distinguished from the ruling and factual circumstances under Social Justice Society which petitioners maintain as squarely applicable.

In Social Justice Society, then Senator Aquilino Q. Pimentel, Jr., who was also a candidate for re-election in the May 10, 2004 elections, filed a petition for certiorari and prohibition, praying that this Court strike down Section 36(g) of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and COMELEC Resolution No. 6486 as unconstitutional for requiring all candidates for public office, both in the national or local government, to undergo a mandatory drug test. Effectively, this created an additional qualification that a candidate must undergo before being allowed to run as a Senator. In granting the petition, this Court ruled that such provisions violate the Constitution by adding a condition sine qua non to the already exclusive requirements enumerated in Article IV thereof. As ruled by this Court:

Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36(g) unmistakably requires a candidate for senator to be certified illegal--drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition sine qua non to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that "[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test." Viewed, therefore, in its proper context, Sec. 36 (g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate. Whether or not the drug-free bar set up under the challenged provision is to be hurdled before or after election is really of no moment, as getting elected would be of little value if one cannot assume office for non-compliance with the drug-testing requirement.[36]

The linchpin distinction between this case and Social Justice Society lies in the qualifications of the members of Congress, which are dependent on the classifications of members of the Senate and the House.

To begin with, senators and senatorial candidates shall mandatorily comply with the qualifications laid down in Section 3, Article VI of the 1987 Constitution, which reads:

SECTION 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty--five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

It is noteworthy that such provision is silent with regard to any classification insofar as members of the Senate are concerned. Further, unlike Section 5(1) which stipulates the composition of the House, the provision that Congress may, by law, provide for additional qualifications for its members, is conspicuously absent. Accordingly, all members of the Senate and all senatorial candidates must meet all the qualifications set by the 1987 Constitution. To recall the ruling of this Court in Social Justice Society, these qualifications are exclusive, and neither Congress nor the COMELEC, may add to or supplant what the 1987 Constitution had already prescribed.

On the other hand, the House is classified into two kinds of members in light of Section 5(1), Article VI of the 1987 Constitution, namely, (1) district representatives, who are elected based on district boundaries and (2) party-list representatives, who are elected on a nationwide basis. In terms of party-list representatives, it has been painstakingly discussed that much room is accorded to Congress in determining who shall be elected as party-list

representatives. To repeat, this draws authority from the phrase under Section 5(1): "x x x and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations." Noteworthy is the absence of the phrase with regard to district representatives. Such gap points to the implication that Congress has not been given constitutional consent to add to their qualifications either.

Guided by the foregoing discussions, it is apparent that Social Justice Society is not on all fours with the instant case.

Markedly, the core issue in Social Justice Society pertained to the addition of constitutional qualifications, which all senatorial candidates must comply. In contrast, the issue in the instant case revolves around who shall be nominated as party-list representatives, to which Congress may expressly provide for via legislation. Going into the qualifications of nominees, not only did Congress reiterate the eligibility requirements under the constitution, it also provided the specific characteristics attributable to nominees that they must, and must not possess, in line with the objective of the party-list system.

It again bears emphasis that the phrase "as provided by law" under Section 5(1), Article VI of the 1987 Constitution enables Congress to develop legislation on how party-list representatives are elected. Hence, it would not be an overextension on its part to likewise provide for the selection of party-list nominees as reflected in Section 8 of R.A. No. 7941, and as later adopted and reproduced by the respondent in COMELEC Resolution No. 10717. Given this stark distinction, this Court finds no reason to overturn, much more to disregard and invalidate, the ruling under Social Justice Society.

In sum, the constitutional prerogative of Congress to enact laws concerning the mechanics of the party-list system, or pertinently in this case, the qualifications of party-list representatives, is settled and should now be laid to rest.

Section 8 of R.A. No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717 insofar as it bars losing candidates in the immediately preceding elections must be struck down as unconstitutional for being violative of the equal protection clause.

Petitioners theorize that Section 8 of R.A. No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717 should be struck down as violative of the equal protection clause.[37] In the main, they argue that there are no substantial distinctions between candidates or nominees of party-lists who (a) have not participated in any election prior to his or her nomination; (b) have won in the elections for a party-list seat or for a different elective office in the immediately preceding elections, or (c) have lost their bid for an elective office in the immediately preceding elections.[38] Thus, there appears to be neither logic nor reason to bar nominees for party-list representatives who lost their bid for an elective office in the immediately preceding elections, while those who won in the same election are allowed to be included in the nomination. Connectedly, neither is there a reason to bar those who lost in the immediately preceding elections in the nomination for party-list representatives but allow them to be candidates for the position of district representatives.[39] Lastly, such arbitrary prohibitions do not appear to be germane to the purpose of the law in promoting proportional representation in the election of representatives through a party-list system.[40]

In contrast, the OSG, in its Comment[41] in G.R. No. 257610, avers that by virtue of the express wording of the Constitution, there is a clear distinction between the members of the House of Representatives who are elected from legislative districts vis-à-vis those who are elected through the party-list system. It further contends that such distinction constitutes as a valid classification that does not infringe on the equal protection clause.[42] In its

Comment[43] in UDK No. 17230, the OSG further contends that the challenged provisions under R.A. No. 7941 and COMELEC Resolution No. 10717 serve a legitimate purpose, as it prevents persons from merely using the party-list system as a mechanism to secure public office after having lost in the previous elections.[44]

This Court agrees with the petitioners.

As will be discussed below, jurisprudential standards for equal protection challenges indubitably show that the classification created by the questioned provisos, on its face and in its operation, bear constitutional infirmity. As a matter of course, Section 8 of R.A. No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717 are struck down and hereby declared unconstitutional.

At the outset, this Court recognizes that regardless of the power of Congress to prescribe the mechanics of the party-list system and to provide for qualifications of party-list representatives by law, it must still yield to the general limitations on legislation and the specific limitations on party-list organizations under the Constitution, particularly the equal protection clause.

No less than the 1987 Constitution guarantees that no person shall be denied equal protection of the laws.[45] In a nutshell, the equal protection clause means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances." [46] Famous is the saying of philosopher Aristotle that equality "consists in the same treatment of similar persons." [47] On this score, this Court finds apropos the discussion in *Victoriano v. Elizalde Rope Workers' Union*, [48] to wit:

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.[49]

Prescinding therefrom, the clause has never been interpreted as an absolute prohibition on any sort of

classification. Better stated, the equal protection clause "does not preclude classification of individuals who may be accorded different treatment under the law, as long as such classification is reasonable and not arbitrary." [50] Clearly then, the legislature is not proscribed from enacting statutes that would ostensibly create specific classes of persons or objects or affect certain classes of persons or objects. [51] Thus, it stands to reason that a statute that treats one class differently from another does not run counter with the equal protection clause if such classification is valid. [52] The classification, to be reasonable, "(1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class." [53]

Over time, jurisprudence developed three tests or levels of scrutiny to determine the propriety of the classification depending on the subject matter involved. [54] This Court, in *Samahan ng mga Progresibong Kabataan v. Quezon City*, [55] succinctly laid down the three tests, which are typified by the dual consideration of the interest invoked by the government, along with the means employed to achieve that interest: [56]

x x x The strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests. [57] (Citations omitted)

In due process and equal protection challenges, this Court accords a deferential attitude to legislative classification and exercises judicial restraint in invalidating a law in light of the broad discretion bestowed to Congress in exercising its legislative power. As reiterated by this Court in *La Union Electric Cooperative, Inc. v. Judge Yaranon*, [58] "as long as there is some basis that can be used by the courts for its decision, the constitutionality of the challenged law will not be touched upon and the case will be decided on other available grounds." [59] At any rate, when there is a showing of a clear and unequivocal breach of the Constitution, this Court has usually resorted to the rational basis test. [60] However, if the challenge to the statute is premised on the denial of a fundamental right or the perpetuation of prejudice against persons favored by the Constitution with special protection, this Court may more appropriately employ the strict scrutiny test. [61]

Here, this Court finds the use of the rational basis test appropriate. Jurisprudence is clear that there is no fundamental right to run for public office that would invoke the application of the rigorous strict scrutiny test. Neither can an argument be made that the parties involved in this case belong to "quasi-suspect classes" such as gender and legitimacy, to trigger the application of the intermediate scrutiny test. [62]

Foremost is the ruling in *Quinto v. Commission on Elections* [63] which was overturned in a later resolution, wherein this Court established that "one's interest in seeking office, by itself, is not entitled to constitutional protection." [64] In the earlier decision, this Court initially linked the right to run for public office to the fundamental rights of expression and association. However, on reconsideration, the Court recognized that such declaration is devoid of basis and "lies on barren ground." [65] In overturning the earlier decision, this Court invoked certain decisions of the US Supreme Court, which has persuasive influence in this jurisdiction:

Accordingly, our assailed Decision's submission that the right to run for public office is "inextricably linked" with two fundamental freedoms — those of expression and association — lies on barren ground. American case law has in fact never recognized a fundamental right to express one's political views through candidacy, as to invoke a rigorous standard of review. *Bart v. Telford* pointedly stated that "[t]he First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either." Thus, one's interest in seeking office, by itself, is not entitled to constitutional protection. Moreover, one cannot bring one's action under the rubric of freedom of association, absent any allegation that, by running for an elective position, one is advancing the political ideas of a particular set of voters. [66] (Citations omitted)

This Court, in *Marquez v. Commission on Elections*,^[67] echoed such earlier pronouncement, that "[w]hile Section 26, Article II of the 1987 Constitution provides that '[t]he State shall guarantee equal access to opportunities for public service,' it is equally undisputed that there is no constitutional right to run for public office. It is, rather, a privilege subject to limitations imposed by law."^[68] Earlier, this Court, in *Pamatong v. Commission on Elections*,^[69] espoused the same view by rejecting the postulations of petitioner Pamatong that a constitutional right exists to run for or hold public office. Rather, what is recognized is merely a privilege to run, subject to the limitations imposed by law.^[70]

To reiterate, given the nonfundamental nature of the right to run or to seek public office, the rational basis test should be applied in analyzing the herein assailed provisions. As expressed by Associate Justice Amy C. Lazaro--Javier, the use of the rational basis test is apt, as "its premise of invalidating classifications that clearly and unequivocally breach the Constitution is a simple reiteration of the fundamental and straightforward legal doctrine that the Constitution is the supreme law and anything that violates it is void."^[71]

Under the rational basis test, the constitutionally assailed law shall be upheld if the legislative classification is shown to rationally further a legitimate state interest.^[72] In other words, to survive the rational basis test, all that is required is for there to be a legitimate government interest and a "reasonable connection between it" and the methods used to achieve it.^[73]

Upon a judicious study of this case, this Court finds that the provisions fail to demonstrate any rational basis to support it. Therefore, it cannot pass constitutional muster.

There is no quibbling that the assailed provisions serve a legitimate government interest to protect the integrity of the party-list system. Section 2 of R.A. No. 7941 spelled out the policy behind the entire law, which reads:

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.

Discernibly, each provision in the law must embody this policy of inclusiveness in attaining its objective of challenging dominant ways in politics by giving an effective platform for all marginalized sectors of society to shape the laws of the land. As emphasized by this Court in *Angkla: Ang Partido ng mga Pilipinong Marino, Inc. v. Commission on Elections*:^[74]

[t]hough enabling sectoral representation, the party-list system is also open to national and regional parties or organizations. It facilitates representation by drawing the focus away from personalities, popularity, and patronage; to programs, principles, and policies. It does not do so by extending extraordinary benefits to select sectors. It challenges voters to see beyond what the dominant electoral system sustains, as well as candidates and political parties to consolidate on considerations other than what may suffice in personality-affirming races won by simple plurality. It allows the forging of organizations and coalitions, and facilitates representation on the basis of ideologies, causes, and ideals that go beyond strict sectoral lines[.]^[75]

Given the legitimate governmental interest that must be upheld, this Court now turns to whether the classification found in the law would rationally further such interest.

This Court finds that it does not.

In the instant case, there appears to be two kinds of classifications or distinctions under Section 8 of R.A. No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717—first, is the distinction between party-list representatives and district representatives, as the prohibition under the assailed provisions only apply to the former and not the latter; and second, the distinction made within the same class of party-list representatives, or more particularly, those who lost in the "immediately preceding election" vis-à-vis those who won or did not participate therein.

This Court has already taken pains in addressing the propriety of the first classification. To recapitulate, Congress is allowed to provide additional qualifications, or in this case, disqualifications, for party-list representatives, having been specifically empowered by Section 5 of the 1987 Constitution. In stark contrast, and in adherence to the ruling in *Social Justice Society*, Congress cannot add to the qualifications for the positions of senators and district representatives.

Au contraire, the second classification faces a different fate. In actual operation, the classification practically discriminates against candidates who, upon suffering a loss from the previous elections, is barred from attempting to once again express his right to run for an elective office as the law precipitately adjudges him or her as having the intention of taking advantage of the party-list system. Thus, the law haphazardly deprives losing candidates who have a genuine stake in a party-list organization and its causes from representing it as a nominee. Concomitantly, party-lists are effectually disenfranchised by the law for arbitrarily limiting its choices of nominees, regardless of their intention for running.

On the same plane, such classification also fails to achieve the purpose behind Section 8, which was supposedly included in the law to limit, discourage, and disallow the abuse of the party-list system as a fallback measure for traditional politicians to serve in an elective position. As propounded by Associate Justice Mario V. Lopez during the deliberations of this case, no clear connection appears to exist between the weakness of the candidate in the previous elections and the probability that their participation would frustrate the policy enshrined in R.A. No. 7941. Along the same lines, Justice Caguioa corroborates that "failure in the elections has been attributed to economic disadvantages and lack of strong political bases. It appears that these are precisely the influences that the party-list system seeks to diminish, so that those who are traditionally disadvantaged in politics for being marginalized and underrepresented can have a real chance at becoming a legislator." [76]

Verily, no substantial distinction can be seen to exist between candidates who lost in the immediately preceding election on one hand, and those who won or did not participate therein, on the other. No unique circumstance exists that is attributable to losing candidates in the immediately preceding election which would result in subverting the objective of the party-list system should they be allowed to participate therein. The classification treating losing candidates in the immediately preceding election differently from other candidates does not find any rational basis.

Aside from violation of the equal protection clause, the prohibition placed on losing candidates likewise violates the constitutional guaranty of substantive due process.

As illumined by *City of Manila v. Laguio*, [77] substantive due process asks whether the government has an adequate reason for taking away a person's life, liberty, or property. More importantly, it examines whether there is sufficient justification for governmental action. [78] As a safeguard against oppressive and arbitrary laws, this Court, using American jurisprudence as a guidepost, instructs that such justification is inextricably linked on the level of scrutiny used. Thus,

[i]f a law is in an area where only rational basis review is applied, substantive due process is met so long as the

law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose.[79]

It bears repeating then that while plenary power is vested in Congress, it may not wield such power arbitrarily. As meticulously explained by this Court, the phrase in the assailed provisions fail to surmount the rational basis. The qualifiers "lost" and "immediately preceding election" do not have any rational basis that would bolster the objective of the party-list law. There is no showing that allowing those who lost as compared to those who won, or even those who did not participate in the immediately preceding election, will have a deleterious effect on the party-list system. Moreover, using as a reference the immediately preceding election, and separating it from the other previous elections does not in any way present a convincing basis that would promote the objective of the party-list system for a genuine representation. It would thus follow that the right to substantive due process was not afforded in the instant case. The prohibition is, in effect, an arbitrary and whimsical intrusion of the right of losing candidates in the immediately preceding elections, by needlessly restraining them from participating in the present elections.

Further, to sustain the prohibition would be inconsistent with, and instead fail to give life to the policy of R.A. No. 7941 in democratizing political power by developing a "full, free, and open party system 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." [80] Surely, the State cannot require eligibility for public office to be conditioned on the person's ill performance in the previous election. Neither may such performance be used as a rubric to gauge his or her ability to serve.

As an insight, and in keeping with the spirit and intent behind R.A. No. 7941, more particularly Section 8, this Court finds that the more consistent and sensible prohibition would be to disqualify candidates for an elective position to serve as a party-list representative in the same elections. To restate, the prohibition under Section 8 of R.A. No 7941 reads:

SECTION 8. Nomination of Party-List Representatives. – x x x

x x x The list shall not include any candidate for any elective office or a person who has lost his bid for elective office in the immediately preceding election.

It must be clarified that the phrase "in the immediately preceding election" pertains to those who lost their bid for elective office and not to any candidate for any elective office. Under the principle of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found with or with which it is associated.[81] The phrase "immediately preceding election," qualifies the phrase "a person who has lost his bid for elective office" not only because it is the immediate antecedent phrase but also because of the need to make a reference to the particular election year as to when a candidate lost. On the other hand, the phrase "any candidate for any elective office" does not require any reference to a particular election year, as it can easily be understood to refer to the current election year. This means that the prohibition under the first phrase of Section 8 disallows a candidate from simultaneously participating for two electoral positions in the same election: one, as a nominee in a party-list; and another, for a separate elective office.

This conclusion is undergirded by the deliberations of then Senate Bill No. 1913, which would eventually merge with House Bill No. 3043, to become R.A. No. 7491. During the deliberations, the sponsor, former Senator Arturo Tolentino, was emphatic in placing an embargo to persons who may seek to simultaneously become a candidate for a district representative position and a party-list nominee:

Senator Tatad. Is there no chance, Mr. President, that a politician who, in fact runs for a congressional seat and at the same time has his name included in the party listing so that even if he loses in the actual combat, if the party gets enough votes as a party under the party-list system, he still gets to sit as a party-list representative?

Senator Tolentino. That is not going to be allowed, Mr. President. An individual has to be either in the party-list or running in a district. If a person is in the party-list, he is not allowed to run in the district as an individual candidate of that party in the district.

Senator Tatad. Thank you very much for that answer.[82]

Unlike the prohibition pertaining to candidates who lost in the immediately preceding elections, the prohibition for candidates running in the same election to be included in the list of party-list nominees is supported by, and is consistent with, Section 73 of Batas Pambansa Bilang 881, otherwise known as the "Omnibus Election Code." The provision bars the filing of certificates of candidacy for more than one position in the same elections, thus:

SECTION 73. Certificate of candidacy. — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificates of candidacy, the person who was filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. (Sec. 19, 1978 EC)

While the provision may have not taken into consideration the unique manner by which party-list candidates are nominated and later elected, the wisdom behind the provision very much applies to the party-list system. Under the party-list system, in lieu of a certificate of candidacy, the names of nominees are included in a certificate of nomination, while such nominee is required to file a corresponding certificate of acceptance of nomination.[83] In any case, where a certificate of candidacy has already been filed by an individual for any elective office, his/her nomination for a party-list should no longer be allowed. This must be so for as already discussed, it is the nominee, should the party-list win, who will sit as a member of the House of Representatives. Such a person cannot be allowed to represent two different constituents. Thus, the prohibition on this part was properly covered by the phrase "The list shall not include any candidate for any elective office" under Section 8 of R.A. No. 7941.

A final word. It cannot be overemphasized that the party-list system, as a significant constitutional innovation, deserves full endorsement of the judiciary and must be protected at all costs. As a mechanism, it ensures the preservation of our democracy by giving voice to the people, making them lawmakers themselves. In this relation, Congress is empowered to enact legislation to provide for the qualifications of party-list nominees who would eventually sit as representatives and members of the House. Be that as it may, any provision introduced therein should not be arbitrary and oppressive to the point of contravening the due process and equal protection clause enshrined in the 1987 Constitution. Woefully, in the instant case, the assailed provisions fall short of what is constitutionally permissible and cannot be sustained.

WHEREFORE, the Petitions for Certiorari and Prohibition in G.R. No. 257610 and UDK No. 17230 are GRANTED. The following are hereby declared INVALID and UNCONSTITUTIONAL:

- The phrase "a person who has lost his bid for elective office in the immediately preceding election" under Section 8 of Republic Act No. 7941;
- The phrase "have lost in their bid for an elective office in the May 13, 2019 National and Local Elections" under Section 5(d) of COMELEC Resolution No. 10717; and
- The phrase "or a person who has lost his bid for an elective office in the May 13, 2019 National and Local Elections" under Section 10 of COMELEC Resolution No. 10717.

The provision under the third sentence, second paragraph of Section 8, Republic Act No. 7941 that is not repugnant to the Constitution reads: "The list shall not include any candidate for any elective office."

SO ORDERED.

Hernando, Inting, Zalameda, M. Lopez, Gaerlan, Dimaampao, Marquez, and Singh, JJ., concur.

Gesmundo, C.J., see concurring opinion.

Leonen, SAJ., I dissent. See separate opinion.

Caguioa, J., see concurring opinion.

Lazaro-Javier, J., Please see dissent.

Rosario,[*] J., on official leave.

Kho, Jr.,[**] J., no part.

[*] On official leave.

[**] No part.

[1] Rollo (UDK No. 17230), pp. 3-29; Rollo (G.R. No. 257610), pp. 3-30.

[2] Entitled "An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor," otherwise known as the "Party-List System Act."

[3] Entitled "Rules and Regulations Governing: 1) Political Conventions; 2) Submission of Nominees of Groups or Organizations Participating Under the Party List System of Representation; and 3) Filing of Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in Connection with the May 9, 2022 National and Local Elections."

[4] See Certificate of Nomination dated October 4, 2021; rollo (G.R. No. 257610), pp. 31-33; Certificate of Acceptance of Nomination dated October 4, 2021; rollo (G.R. No. 257610), 34-35.

[5] Rollo (G.R. No. 257610), p. 9.

[6] Id. at 10.

[7] Rollo (UDK No. 17230), p. 8.

[8] Id. at 9.

[9] Id.

[10] Rollo (UDK No. 17230), p. 98.

[11] Rollo (G.R. No. 257610), pp. 11-12; Rollo (UDK No. 17230), p. 11.

[12] SECTION 6. No person shall be a Member of the House of Representatives unless he is a natural-born

citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

[13] Rollo (UDK No. 17230), p. 12; Rollo (G.R. No. 257610), p. 14.

[14] 591 Phil. 393 (2008); Rollo (UDK No. 17230), pp. 12-16; Rollo (G.R. No. 257610), p. 20.

[15] Rollo (G.R. No. 257610), pp. 177-202.

[16] *Id.* at 187.

[17] *Id.* at 184-185.

[18] Rollo (UDK No. 17230), pp. 74-88.

[19] *Id.* at 82.

[20] Record of the Constitutional Commission, vol. II, p. 561.

[21] 412 Phil. 308 (2001).

[22] *Id.* at 322.

[23] 609 Phil. 751 (2009).

[24] *Id.* at 768-769.

[25] 626 Phil. 346 (2010).

[26] *Id.* at 354.

[27] *Id.* at 353.

[28] II Record, Constitutional Commission, August 1, 1986, p. 572.

[29] Concurring Opinion, 4.

[30] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, supra note 21, at 339.

[31] R.A. No. 7941, Sec. 2.

[32] Record of the Bicameral Conference Committee on Suffrage & Electoral Reforms on House Bill No. 3043 and Senate Bill No. 1913, February 28, 1995, p. 8.

[33] R.A. No. 7941, Sec. 9.

[34] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 452 Phil. 899, 924 (2003).

[35] See *Rev. Pamatong v. Commission on Elections*, 470 Phil. 711, 715-716 (2004).

[36] *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*, supra note 14, at 406-407.

[37] Rollo (UDK No. 17230), p. 18; Rollo (G.R. No. 257610), p. 20.

[38] Rollo (G.R. No. 257610), p. 20.

[39] Rollo (UDK No. 17230), pp. 18-19; Rollo (G.R. No. 257610), p. 20.

[40] Rollo (G.R. No. 257610), p. 21.

- [41] Id. at 177-202.
- [42] Id. at 191.
- [43] Rollo (UDK No. 17230), pp. 74-88.
- [44] Id. at 82-83.
- [45] 1987 Constitution, Art. III, Sec. 1.
- [46] ABAKADA Guro Party List v. Executive Secretary, 506 Phil. 1, 129 (2005).
- [47] Ang Ladlad LGBT Party v. Commission on Elections, 632 Phil. 32, 77 (2010).
- [48] 158 Phil. 60 (1974).
- [49] Id. at 86-88.
- [50] Ambros v. Commission on Audit, 501 Phil. 255, 279 (2005).
- [51] Zomer Development Company, Inc. v. Court of Appeals, G.R. No. 194461, January 7, 2020, 928 SCRA 110, 133.
- [52] Id.
- [53] People v. Cayat, 68 Phil. 12, 18 (1939).
- [54] See Ang Ladlad LGBT Party v. Commission on Elections, supra note 47, citing The 1987 Constitution of the Philippines: A Commentary, Fr. Joaquin Bernas, S.J., pp. 139-140 (2009).
- [55] 815 Phil. 1067 (2017).
- [56] Id. at 1147, Separate Opinion of Associate Justice Marvic M.V.F. Leonen.
- [57] Id. at 1113-1114.
- [58] 259 Phil. 457 (1989).
- [59] Id. at 466.
- [60] Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 487 Phil. 531, 583-584 (2004).
- [61] Id. at 600.
- [62] Ang Ladlad LGBT Party v. Commission on Elections, supra note 47, 107 (2010).
- [63] 627 Phil. 193 (2010).
- [64] Id. at 253.
- [65] Id.
- [66] Id. at 253-254.
- [67] 861 Phil. 667 (2019).
- [68] Id. at 686. (Emphasis supplied)

[69] 470 Phil. 711 (2004).

[70] Id. at 715-716.

[71] Dissenting Opinion, p. 4.

[72] *British American Tobacco v. Camacho*, 584 Phil. 489, 525 (2008).

[73] See Concurring Opinion of Senior Associate Justice Marvic Mario Victor F. Leonen in *Sobrejuanite--Flores v. Pilando*, G.R. No. 251816, November 23, 2021, citing *Zomer Development Company, Inc. v. Court of Appeals*, *supra* note 51.

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

[75] Id., see Concurring Opinion of Senior Associate Justice Marvic M.V.F. Leonen.

[76] Id.

[77] 495 Phil. 289 (2005).

[78] Id. at 311.

[79] Id. at 311-312.

[80] R.A. No. 7941, Sec. 2.

[81] *Peralta v. Philippine Postal Corporation*, 844 Phil. 603, 638 (2018).

[82] Transcript of Senate Proceedings, November 19, 1994, p 6.

[83] COMELEC Resolution No. 10717, Secs. 4-6.

CONCURRING OPINION

GESMUNDO, C.J.:

I concur with the ponencia in granting the petitions and declaring unconstitutional the phrase "person who has lost his bid for elective office in the immediately preceding election" in Section 8 of the Party-List System Act or Republic Act (R.A.) No. 7941,[1] and its counterpart phrases in COMELEC Resolution No. 10717.

I share my ruminations to: (a) deepen the discussion as regards the constitutionally enshrined qualifications for congressional positions; and (b) stress that the rational basis test is the proper test to examine the constitutionality of the assailed provisions.

For context, the assailed provision under R.A. No. 7941 prohibits "a person who has lost his bid for an elective office in the immediately preceding election" from becoming a party-list nominee, viz.:

Section 8. Nomination of Party-List Representatives. Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5) from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his

bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned. (Emphasis supplied)

In affirming the legislative power to provide additional qualifications for party-list representatives, the ponencia cites as authority Article VI, Section 5 of the 1987 Constitution, which pertinently provides thus: "those who, as provided by law, shall be elected through a party-list system[.]" The ponencia concludes that Congress was explicitly delegated by the Constitution to determine the mechanics of the party-list system, and with it, the qualification of party-list representatives and the conduct for their nominations.[2] The ponencia likewise distinguishes between the ruling in the instant case and that in *Social Justice Society v. Dangerous Drugs Board*[3] (*Social Justice Society*), viz.:

Markedly, the core issue in *Social Justice Society* pertained to the addition of constitutional qualifications, which all senatorial candidates must comply. In contrast, the issue in the instant case revolves around who shall be nominated as party-list representatives, to which Congress may expressly provide for via legislation. x x x

It again bears emphasis that the phrase "as provided by law" under Section 5(1), Article VI of the 1987 Constitution enables Congress to develop legislation on how party-list representatives are elected.[4]

Nevertheless, I want to expound on the discussion regarding the constitutionally enshrined qualifications for congressional positions.

Philosophical underpinnings of the exclusivity of constitutionally--prescribed qualifications under U.S. Law

In the 2008 case of *Social Justice Society*, the Court declared as unconstitutional the statutory provision requiring candidates for public office to undergo mandatory drug-testing, briefly stating that, as regards Senators, the provision "enlarges the qualification requirements enumerated" in the Constitution.[5] It found well-taken Senator Pimentel's argument that "Congress cannot validly amend or otherwise modify [the] qualification standards" for Senators under Article VI, Section 3 of the Constitution. The Court effectively held therein that the qualifications under the Constitution are exclusive.

This runs parallel with the school of thought followed in the United States, from which our constitutional system is patterned.[6] In the 1995 case of *U.S. Term Limits, Inc. v. Thornton*,[7] the U.S. Supreme Court held that "the constitutional qualifications for congressional service are 'fixed,' at least in the sense that they may not be supplemented by Congress." It added that "the Framers intended the Constitution to be the exclusive source of qualifications for Members of Congress, and that the Framers thereby 'divested' States of any power to add qualifications." [8]

Indeed, Alexander Hamilton wrote in the *Federalist Papers* that the "qualifications of the persons who may choose or be chosen" "are defined and fixed in the Constitution, and are unalterable by the legislature." [9] James Madison similarly argued for very minimal qualifications for Congress.[10] He stated that the "qualifications of electors and elected are fundamental articles" in a republican government and should be "fixed in the Constitution" to prevent infringement of the free choice of people to select who will represent them.[11] In *Powell v. McCormack*, [12] the U.S. Supreme Court concluded, after examining the historical context (i.e., pre-convention

or English and colonial precedents, as well as the convention debates), thus: "the Constitution leaves the House without authority to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution." [13] To be clear, these foreign cases and principles are "not relied upon as precedents, but as guides of interpretation." [14]

Consistent with the above-discussed school of thought embodied in U.S. jurisprudence, the Court in *Social Justice Society* struck down, for being unconstitutional, a statutory provision that seemingly added a qualification for one to run as senator. It was concluded, thus:

It ought to be made abundantly clear ... that the unconstitutionality of Sec. 36(g) of RA 9165 is rooted on its having infringed the constitutional provision defining the qualification or eligibility requirements for one aspiring to run for and serve as senator. [15]

It bears acknowledging, however, that Philippine law may not have completely subscribed to this school of thought.

Qualifications under the Philippine context

In the Philippine context, the 1987 Constitution specifies the qualifications for national elective officials as well as members of constitutional commissions and offices. As regards the members of the House of Representatives, Article VI, Section 6 [16] of the Constitution enumerates the eligibility requirements that apply to both types of its members - district and party-list representatives. On top of these eligibility requirements (i.e., age, residence, literacy, etc.), the Constitution in its various provisions also specifies disqualifications (or negative qualifications), such as term limits, and disqualification due to impeachment, among others.

However, in contrast to the American constitutional framework, and as the ponencia correctly observed, Article VI, Section 5 of the 1987 Constitution authorizes the legislature to add to the constitutionally prescribed qualifications as regards party-list representatives, which it refers to as "those who, as provided by law, shall be elected through a party-list system[.]" Such language means that, in the ponencia's words, "much room is accorded to Congress in determining who shall be elected as party-list representatives." [17] Moreover, even under the previous regime, the 1973 Constitution allowed other qualifications of the then sectoral representatives to be "provided by law." [18]

On the statutory plane, additional qualifications for national elective positions have been implemented. For one, the Omnibus Election Code (OEC) provides disqualifications for all candidates under Sections 12 and 68, [19] as shown below:

Section 12. Disqualifications. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty[.]

Section 68. Disqualifications. – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e,

k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Emphases and underscoring supplied)

Moreover, the assailed provision in this case, Section 8 of R.A. No. 7941, also adds a statutory disqualification specific to party-list representatives (i.e., lost the bid for an elective post in the last election).

Section 57(a) of the Revised Rules on Administrative Cases in the Civil Service provides that the penalty of dismissal from service for serious administrative charges carries with it "perpetual disqualification from holding public office." [20] Previously, Philippine case law subscribed to the condonation doctrine, which was sourced from U.S. law, such that an elective official cannot be removed from office for a misconduct committed during a prior term. Recently, the Court categorically abandoned [21] such doctrine not only for lack of legal basis but also for being rendered obsolete by the public accountability standard under the prevailing framework of the 1987 Constitution. Hence, being found guilty of a serious administrative offense committed during a prior term also gives rise to one's disqualification from being elected.

Based on the foregoing, the legal framework in the Philippines does not seem to strictly adhere to the philosophy of exclusive constitutional qualifications, as espoused by the framers of the U.S. Constitution and established in U.S. jurisprudence. Indeed, our framework has long departed from its foreign counterpart.

Guideline as regards constitutionality of additional qualifications under statutes

In my humble view, there is considerable value in retaining the exclusivity of the constitutionally prescribed qualifications. Indeed, limiting the qualifications of candidates running for congressional posts to those explicitly provided under the Constitution is a way of preventing, in the words of James Madison, a republic from being converted into "an aristocracy or oligarchy" "by limiting the number [of persons] capable of being elected." [22] In line with the principles of a republican government, "no qualification of wealth, of birth, of religious faith, or of civil profession" [23] may be added by Congress to the list of constitutional qualifications.

Further, there are disqualifications provided under our statutes that correspond to the inability of a candidate to eventually fulfill his duties should such candidate be elected, such as those provided in Section 12 of the OEC (i.e., insane or incompetent, or sentenced by final judgment for the listed crimes against public order, or for an offense penalized by more than eighteen months, or for a crime involving moral turpitude). There are also disqualifications that further strengthen the disciplinary and public accountability framework under the Article XI of the Constitution; particularly, disqualification from holding public office after being found administratively liable for serious misconduct that warrants dismissal from service.

On these scores, it is my view that any additional qualification for congressional posts must find anchor on a constitutional principle, or at the very least, have bearing on the fitness of the candidate to serve the electorate. This guiding principle will assist the Court in ascertaining the constitutionality of any prescribed qualification in addition to those already listed under the Constitution. Otherwise, if the additional qualification to be provided by law is completely irrelevant to the fitness of the candidate to discharge his/her function under the Constitution, then such additional qualification would be unconstitutional.

It is my hope that the disquisition above will guide the Court in resolving cases involving the validity of

qualifications added by statute to those constitutionally prescribed for congressional positions.

Rational basis test; non-fundamental right

As regards the applicable test to determine the constitutionality of the assailed provision, the ponencia correctly applies the rational basis test because, as accurately pointed out by Justices Alfredo Benjamin S. Caguioa and Mario V. Lopez during the deliberations, there is no constitutionally protected right to seek public office.[24] In the words of the ponencia, there is "no fundamental right to run for public office." [25]

To expound, in the recent case of *Marquez v. COMELEC*, [26] the Court reiterated the jurisprudential pronouncement that "[w]hile Section 26, Article II of the 1987 Constitution provides that '[t]he State shall guarantee equal access to opportunities for public service,' it is equally undisputed that there is no constitutional right to run for public office. It is, rather, a privilege subject to limitations imposed by law." [27] The same ruling has been previously made in *Pamatong v. COMELEC*, [28] where the Court categorically rejected the claim that there is a constitutional right to run for or hold public office, by stating that "[t]here is none." In its Resolution in *Quinto v. COMELEC*, [29] the Court overturned its previous finding that the right to run for public office is linked to the fundamental rights of expression and association, to wit:

[O]ur assailed Decision's submission that the right to run for public office is "inextricably linked" with two fundamental freedoms — those of expression and association — lies on barren ground. American case law has in fact never recognized a fundamental right to express one's political views through candidacy, as to invoke a rigorous standard of review. *Bart v. Telford* pointedly stated that "[t]he First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either." Thus, one's interest in seeking office, by itself, is not entitled to constitutional protection. Moreover, one cannot bring one's action under the rubric of freedom of association, absent any allegation that, by running for an elective position, one is advancing the political ideas of a particular set of voters. [30] (Emphases in the original; citations omitted)

To emphasize, the Court in *Quinto* firmly pronounced that the supposed link between the right to run for public office, on one hand, and the fundamental rights of expression and association, on the other, "lies on barren ground." A careful reading of the Resolution shows that the Court explicitly declared the non-fundamental character of the right to seek elective office, thus:

Prescinding from these premises, it is crystal clear that the provisions challenged in the case at bar, are not violative of the equal protection clause. The deemed-resigned provisions substantially serve governmental interests (i.e., (i) efficient civil service faithful to the government and the people rather than to party; (ii) avoidance of the appearance of "political justice" as to policy; (iii) avoidance of the danger of a powerful political machine; and (iv) ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity). These are interests that are important enough to outweigh the non-fundamental right of appointive officials and employees to seek elective office. [31] (Emphases supplied)

Indeed, while the right to run for public office has been recognized in this jurisdiction, such right does not rise to the level of a fundamental right as to trigger the application of the strict scrutiny test.

As Justice Caguioa aptly points out, there is no precise definition or enumeration of fundamental rights. [32] Indeed, while there is little debate that those guaranteed in the Bill of Rights, especially those mirrored in the Universal Declaration of Human Rights, are of fundamental nature, [33] other rights that are not enumerated in the

Constitution have also been declared to be of such stature.[34] On this point, I echo Justice Francis Jardaleza's call for the Court to "endeavor to be deliberate and open about its choice of approach in fundamental rights cases." [35] To my mind, while there are no clear guidelines yet in Our jurisdiction on the methods of identifying implied fundamental rights, the Court should remain cautious and guard itself against loosely characterizing certain rights as fundamental in character. For this reason, I applaud the ponencia for making abundantly clear that there is no constitutional and fundamental right to run for public office.

In light of the non-fundamental nature of the right to seek public office, it is my view that the ponencia correctly used the rational basis test in determining the constitutionality of the assailed provisions through the prism of the equal protection clause.

Applying the rational basis test; equal protection clause

Pertinently, the rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.[36]

The government's interest in enacting R.A. No. 7941[37] is discernible from its Declaration of Policy, to wit:

Section 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 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. (Emphases supplied)

Unquestionably, there is a legitimate government interest in creating a party-list system that enables citizens from the "marginalized and underrepresented" to be legislators despite them not having "well-defined political constituencies." The party-list system is institutionalized precisely to benefit those who may not win in other elective posts due to their financial limitations and ostensibly marginal position in society, even though they are willing and well-equipped to contribute in the crafting of meaningful legislation. The noble purpose of the law is precisely to "enhance the chances" of these citizens to win legislative seats.

This brings us to the question whether there is a reasonable connection between the stated government purpose and the means employed to achieve it. In this case, the means employed is the statutorily-imposed disqualification of "a person who has lost his bid for an elective office in the immediately preceding election" from becoming a party-list nominee.[38]

In this case, the rationale given to justify the assailed prohibition is "to limit, discourage, and disallow the abuse of the party-list system as a fallback measure for traditional politicians to serve in an elective post." [39]

To my mind, no reasonable connection was established between the purpose of the statute and the disqualification imposed on those who lost in the last elections. The supposed "abuse of the party-list system" is not squarely addressed by prohibiting those who lost in the previous election from becoming a party-list nominee. If at all, it even puts them at a disadvantage and perpetuates the non-inclusivity sought to be avoided by the party-list

system. Discriminating against those who lost in the immediately preceding elections vis-à-vis those who either (a) have not participated in any election or (b) have won in the previous elections for a party-list seat or for a different elective office,[40] does not serve to fulfill the stated legitimate government interest.

Contrary to the expressed purpose of the statute, the "chances" of those candidates who may not have the political machinery to win the elections but are competent to craft, scrutinize, and pass impactful legislation, are not "enhanced." Indeed, the exclusion of such persons from becoming nominees does not serve to advance the State's policy to give representation to the "marginalized and underrepresented" and "enhance their chances" to win a legislative seat.

Bearing in mind the inclusivity principle as the rationale for the introduction of the party-list system in our government structure, I emphatically concur with the ponencia in finding no rational basis for the "classification treating losing candidates in the immediately preceding election differently from" candidates who either won or did not participate in such election.[41]

All told, I concur with the ponencia in declaring that the assailed provisions that disqualify "a person who has lost his bid for an elective office in the immediately preceding election" from becoming a party-list nominee, as constitutionally infirm.

WHEREFORE, I vote to GRANT the petitions.

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

[2] Ponencia, pp. 8-9.

[3] 591 Phil. 393 (2008) [Per J. Velasco, Jr., En Banc].

[4] Ponencia, p. 11.

[5] Social Justice Society v. Dangerous Drugs Board, *supra*, at 406-407.

[6] See *Arnault v. Nazareno*, 87 Phil. 29 (1950) [Per J. Ozaeta].

[7] 514 U.S. 779 (1995).

[8] *Id.*

[9] Alexander Hamilton, *The Federalist Papers* No. 60 (Concerning the Power of Congress to Regulate the Election of Members), February 26, 1988.

[10] See Congressional Research Service, *Qualifications of Members of Congress*, January 15, 2015.

[11] See 2 Farrand, *RECORDS OF THE FEDERAL CONVENTION OF 1787*, available at <<https://oll.libertyfund.org/title/farrand-the-records-of-the-federal-convention-of-1787-vol-2>>: "Mr was opposed to the Section as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorised to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them

with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power also, which might be made subservient to the views of one faction agst. another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of a weaker faction."

[12] 395 U.S. 486 (1969).

[13] Id.

[14] *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*, 503 Phil. 485, 519-520 (2005) [Per J. Tinga, En Banc].

[15] *Social Justice Society v. Dangerous Drugs Board*, supra note 3, at 408.

[16] The provision states that "SECTION 6. No person shall be a Member of the House of Representatives unless he is [a] a natural-born citizen of the Philippines and, [b] on the day of the election, is at least twenty-five years of age, [c] able to read and write, and, [d] except the party-list representatives, a registered voter in the district in which he shall be elected, and [e] a resident thereof for a period of not less than one year immediately preceding the day of the election." (Underscoring supplied)

[17] Ponencia, p. 11.

[18] Article VIII, Section 4, 2[nd] paragraph of the 1973 Constitution states that "a sectoral representative shall be a natural-born citizen, able to read and write, and shall have such other qualifications as may be provided by law." (Underscoring supplied)

[19] Note, however, in *Javier v. COMELEC*, 777 Phil. 700, 727 (2016) (Per J. Brion, En Banc), it was held that "R.A. No. 7890 expressly repealed Section 261 d(1) and (2) of Batas Pambansa Blg. 881, rendering these provisions inoperative. The effect of this repeal is to remove Section 261(d) from among those listed as ground for disqualification under Section 68 of the Omnibus Election Code."

[20] The relevant portions of the provision read: "Section 57. Administrative Disabilities Inherent in Certain Penalties. The following rules shall govern the imposition of accessory penalties: (a) The penalty of dismissal shall carry with it x x x perpetual disqualification from holding public office[.]" The Revised Rules was promulgated pursuant to the constitutional power of the Civil Service Commission.

[21] *Ombudsman Carpio Morales v. Court of Appeals*, 772 Phil. 672, 775 (2015) [Per J. Perlas-Bernabe, En Banc].

[22] See 2 Farrand, RECORDS OF THE FEDERAL CONVENTION OF 1787, available at <<https://oll.libertyfund.org/title/farrand-the-records-of-the-federal-convention-of-1787-vol-2>>: "Mr was opposed to the Section as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power also, which might be made subservient to the views of one faction agst. another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of a weaker faction."

[23] Federalist Papers No. 57, The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation, February 19, 1788, as cited in Congressional Research Service, Qualifications of Members of Congress, January 15, 2015.

[24] See Justice Caguioa's Concurring Opinion, p. 6.

[25] Ponencia, p. 15.

[26] 861 Phil. 667 (2019) [Per J. Jardeleza, En Banc].

[27] Id. at 686.

[28] 470 Phil. 711, 715-716 (2004) [Per J. Tinga, En Banc]. The Court held thus: "[i]mplicit in the petitioner's invocation of the constitutional provision ensuring "equal access to opportunities for public office" is the claim that there is a constitutional right to run for or hold public office and, particularly in his case, to seek the presidency. There is none. What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort." (Underscoring supplied)

[29] 627 Phil. 193 (2010) [Per C.J. Puno, En Banc].

[30] Id. at 253-254.

[31] Id. at 254.

[32] See Justice Caguioa's Concurring Opinion, p. 6.

[33] See *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1106 (2017) [Per J. Perlas-Bernabe, En Banc]. ("The right to travel is recognized and guaranteed as a fundamental right under Section 6, Article III of the 1987 Constitution"); see also *Kwong v. Presidential Commission on Good Government*, 240 Phil. 219, 229 (1987) [Per J. Melencio-Herrera, En Banc]. ("The right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution and the Universal Declaration of Human Right[.]"); see *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 406 (2014) [Per J. Abad, En Banc]. ("Affecting as it does our fundamental rights to expression, it therefore is clearly unconstitutional").

[34] See Justice Francis Jardeleza's Separate Opinion in *Versoza v. People*, 861 Phil. 230 (2019) (Resolution), [Per Curiam, En Banc].

[35] Id. at 355.

[36] *Zomer Development Company, Inc. v. Special Twentieth Division of the Court of Appeals*, G.R. No. 194461, January 7, 2020, 928 SCRA 110, 137 [Per J. Leonen, En Banc].

[37] Otherwise known as the Party-List System Act. Approved: March 3, 1995.

[38] The provision reads thus:

Section 8. Nomination of Party-List Representatives. Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5) from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid

for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned. (Emphasis supplied)

[39] Ponencia, p. 18.

[40] Id. at 19-20.

[41] Id. at 19.

DISSENTING OPINION

LEONEN, SAJ.:

I dissent.

I vote to sustain the constitutionality of the phrase "a person who has lost his bid for elective office in the immediately preceding election" stated in Republic Act No. 7941, also known as the "Party-List System Act", Section 8, thus:

SECTION 8. Nomination of Party-List Representatives. – Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5) from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned. (Emphasis supplied)

Consequently, respondent Commission on Elections did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in providing for the same qualification when it issued Commission on Elections Resolution No. 10717, or the "Rules And Regulations Governing: (1) Political Conventions; (2) Submission of Nominees of Groups or Organizations participating under the Party-List System of Representation; and (3) Filing of Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in Connection with the May 9, 2022 National and Local Elections", Sections 5(d) and 10, thus:

SECTION 5. Contents and Form of the Certificate of Nomination. – The Certificate of Nomination of a PP, sectoral party, organization or Coalition shall contain the following:

- a. Name of the PP, sectoral party, organization or Coalition;
- b. Name of the Chairperson/President/Secretary-General of the nominating PP, sectoral party, organization or Coalition;
- c. Name and Address of all the nominees;

d. A certification that the nominees have all the qualifications and none of the disqualifications provided by law and that they are not candidates for any elective office or have lost in their bid for an elective office in the May 13, 2019 National and Local Elections;

e. A documentary stamp in the amount of Thirty Pesos (Php30.00);

f. The signature and attestation under oath, either by the Chairperson, President, Secretary-General or any other duly authorized officer of the nominating PP, sectoral party, organization or coalition.

....

SECTION 10. Nomination of Party-List Representatives. – A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the May 13, 2019 National and Local Elections. No change of names or alterations of the order of nominees shall be allowed after the same shall have been submitted to the Commission except in cases where the nominee dies, becomes incapacitated, or there is valid withdrawal and substitution of nominees as provided in the succeeding sections, in which case, the name of the substitute nominee shall be placed last in the list. (Emphasis supplied)

I

Article VIII, Section 5(1) of the Constitution states that this Court has "original jurisdiction over ... petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus." Jurisdiction, however, must be distinguished from justiciability, and it is justiciability that will ultimately determine whether this Court ought to take cognizance of a case assailing the constitutionality of the statute, as explained in *Lagman v. Ochoa, Jr.*:^[1]

Jurisdiction is a court's competence "to hear, try and decide a case." It is granted by law and requires courts to examine the remedies sought and issues raised by the parties, the subject matter of the controversy, and the processes employed by the parties in relation to laws granting competence. Once this Court determines that the procedural vehicle employed by the parties raises issues on matters within its legal competence, it may then decide whether to adjudicate the constitutional issues brought before it.

Jurisdiction alone will not require this Court to pass upon the constitutionality of a statute. As held in *Angara v. Electoral Commission*, the power of judicial review remains subject to this Court's discretion in resolving actual controversies:

[W]hen the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation. (Emphasis supplied)

Thus, as a rule, this Court only passes upon the constitutionality of a statute if it is "directly and necessarily involved in [a] justiciable controversy and is essential to the protection of the rights of the parties concerned."

Courts decide the constitutionality of a law or executive act only when the following essential requisites are present: first, there must be an actual case or controversy; second, petitioners must possess *locus standi*; third, the question of constitutionality must be raised at the earliest opportunity; and fourth, the resolution of the question is

unavoidably necessary to the decision of the case itself. These requisites all relate to the justiciability of the issues raised by the parties. If no justiciable controversy is found, this Court may deny the petition as a matter of discretion.

This justiciability requirement is "intertwined with the principle of separation of powers." It cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government.

....

Again, jurisdiction in itself will not automatically merit a ruling on the constitutionality of the assailed provisions. Invocations of "transcendental importance" will not affect this Court's competence to decide the issues before it, and raising this Court's competence to decide issues of constitutionality will not necessarily require it to do so. Rather, this Court's exercise of its power of judicial review will depend on whether the requirements for invoking such power have been adequately met.[2] (Emphasis supplied, citations omitted)

The requirement of justiciability is explicitly provided in the second paragraph of Article VIII, Section 1 of the Constitution:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

For a proper exercise of judicial review, the Court must find the following essential requisites of justiciability to be present: "first, there must be an actual case or controversy; second, petitioners must possess locus standi; third, the question of constitutionality must be raised at the earliest opportunity; and fourth, the resolution of the question is unavoidably necessary to the decision of the case itself." [3]

An actual case or controversy exists when there is "a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic[.]" [4] A case ceases to present a justiciable controversy when it has become moot and academic due to supervening events:

A case is moot and academic if it "ceases to present a justiciable controversy because of supervening events so that a declaration thereon would be of no practical use or value." When a case is moot and academic, this court generally declines jurisdiction over it.

There are recognized exceptions to this rule. This court has taken cognizance of moot and academic cases when:

(1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review. (Citation omitted)

We may no longer act on petitioner's prayer that his name be included in the certified list of candidates and be printed on the ballots as a candidate for Member of the Sangguniang Panlungsod. Petitioner filed with this court his Petition for Certiorari on March 15, 2013, 39 days after respondent began printing the ballots on February 4, 2013. Also, the May 13, 2013 elections had been concluded, with the winners already proclaimed.[5] (Citations omitted)

Furthermore, a party who impugns the constitutionality of a statute must have legal standing or locus standi:[6]

Legal standing or locus standi is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained

or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."

The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:

A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest, interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved." Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought.[7] (Citations omitted)

A party will have no legal standing "[u]nless one's constitutional rights are affected by the operation of a statute or governmental act." [8]

Here, the petitioners directly filed before this Court consolidated petitions for certiorari and prohibition seeking to nullify the phrase "a person who has lost his bid for elective office in the immediately preceding election" in Section 8 of Republic Act No. 7941 and Sections 5(d) and 10 of Commission on Elections Resolution No. 10717.

In G.R. No. 257610, petitioner Glenn Quintos Albano alleges to have previously ran and lost in his bid as city councilor of Taguig City in the May 13, 2019 election, and to being the second nominee of party-list Talino at Galing ng Pinoy for the May 9, 2022 elections.[9] He claims "actual threatened injury" on his right to be a nominee due to the qualification that a party-list nominee must not have lost in his or her bid for an elective office in the immediately preceding election.[10] In UDK 17230, petitioner Catalina G. Leonen-Pizarro also claims that her right to be nominated as party-list representative is threatened by the same provision, since she lost in her bid as mayor of Supiden, La Union in the May 13, 2019 elections, and she is the first party-list nominee of party-list Arts Business and Science Professionals.

There is no actual controversy here, as this case is now moot and academic. The questioned Commission on Elections Resolution No. 10717 pertains to the Rules and Regulations governing: (1) Political Conventions; (2) Submission of Nominees of Groups or Organizations Participating under The Party-List System of Representation; and (3) Filing of Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in connection with the May 9, 2022 National and Local Elections. Since the May 9, 2022 elections had been concluded, and the party-list winners and its nominees had been proclaimed, petitioners can no longer claim to be affected by the provision as nominees of their party-lists.

Besides, petitioners do not have legal standing to file the Petitions. They anchor their right to assail the constitutionality of the law on their "threatened" right to become nominees of their party-lists or the "actual threatened injury" they will sustain if they are not nominated. However, petitioners did not sufficiently establish the direct injury they sustained, or will sustain, when they were not nominated by their party-lists. Even if they

became a party-list nominee, it does not mean that their party will win, and they will become party--list representatives. Their alleged right is therefore speculative or conditional. Moreso when there is no constitutional right to run for or hold public office.[11]

Furthermore, petitioners justify their direct resort to this Court and their legal standing on the allegation of "transcendental importance" on the issue involved.[12] However, mere invocation of "transcendental importance", without more, should not warrant consideration of the Court:

Petitioners try to justify its direct recourse to this court by arguing that the issues raised in their petitions are of "transcendental importance."

To determine if an issue is of transcendental importance, this court is guided by the parameters set forth in *Francisco v. House of Representatives*:

There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.

A mere allegation of transcendental importance will not suffice to convince this court to take cognizance of a case. Petitioner SJS, in its memorandum, point out that since this court had taken cognizance of G.R. No. 156052, there is no more need to present other arguments to convince this court that the matter at hand is of transcendental importance.

Petitioners are mistaken. Whether an issue is of transcendental importance is a matter determined by this court on a case-to-case basis. An allegation of transcendental importance must be supported by the proper allegations.

Petitioners, however, merely stated:

This Honorable Court, again in the prequel case of *Social Justice Society, et al. v. Atienza*, G.R. No. 156052, 13 February 2008, made the following statements —

The importance of settling this controversy as fully and as expeditiously as possible was emphasized, considering its impact on public interest. Thus, we will also dispose of this issue here. The parties were after all given ample opportunity to present and argue their respective positions. By so doing, we will do away with the delays concomitant with litigation and completely adjudicate an issue which will most likely reach us anyway as the final arbiter of all legal disputes.

The foregoing was an undeniable recognition by this Honorable Court of the importance of this case as it mentioned "its impact on public interest" that justified its taking cognizance of the original petition because the issue would most likely reach it anyway "as the final arbiter of all legal disputes." Thus, petitioners need not stretch its argumentation to convince this Honorable Court about the transcendental importance of this case.

For this court to brush aside the rules of procedure in view of the "transcendental importance" of a case, petitioners must be able to show that "the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence." This they failed to do.[13] (Emphasis supplied, citations omitted)

Thus, in *Provincial Bus Operators Association of the Philippines*:

This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our

jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.[14]

For failure to show that there still exists an actual controversy or that petitioners have legal standing, the present Petitions should have been dismissed outright.

However, even if we rule on the substantive arguments, the Petitions should still be denied.

II

The Constitution mandates that no person shall "be denied the equal protection of the laws." The right to equal protection of the laws enshrined in our Constitution requires that all persons, under similar circumstances and conditions, shall be treated alike:[15]

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exists for making a distinction between those who fall within such class and those who do not.[16] (Emphasis in the original)

The equal protection of the laws, however, do not prohibit legal classification, provided there is reasonable classification: (1) based on substantial distinctions which make for real differences; (2) germane to the purpose of the law; (3) not limited to existing conditions only; and (4) applicable equally to each member of the same class, thus:

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from

recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.[17] (Emphasis supplied, citations omitted)

The legislature is granted wide leeway in providing classification, as long as it is not unreasonable and unfounded:

Some may disagree with the wisdom of the legislature's classification. To this we answer, that this is the prerogative of the law-making power. Since the Court finds that the classification is actual, real and reasonable, and all persons of one class are treated alike, and as it cannot be said that the classification is patently unreasonable and unfounded, it is in duty bound to declare that the legislature acted within its legitimate prerogative and it cannot declare that the act transcends the limit of equal protection established by the Constitution.

Broadly speaking, the power of the legislature to make distinctions and classifications among persons is not curtailed or denied by the equal protection of the laws clause. The legislative power admits of a wide scope of discretion, and a law can be violative of the constitutional limitation only when the classification is without reasonable basis.[18] (Emphases supplied)

In *Dumlao v. Commission on Elections*,[19] this Court found as not violative of the equal protection clause the provision in the law disqualifying a 65-year old elective local official, who retired from a provincial, city or municipal office, from running for the same office from which he had retired, thus:

[I]n the case of a 65-year old elective local official, who has retired from a provincial, city or municipal office, there is reason to disqualify him from running for the same office from which he had retired, as provided for in the challenged provision. The need for new blood assumes relevance. The tiredness of the retiree for government work is present, and what is emphatically significant is that the retired employee has already declared himself tired and unavailable for the same government work, but, which, by virtue of a change of mind, he would like to assume again. It is for the very reason that inequality will neither result from the application of the challenged provision. Just as that provision does not deny equal protection, neither does it permit such denial. Persons similarly situated are similarly treated.

In fine, it bears reiteration that the equal protection clause does not forbid all legal classification. What it proscribes is a classification which is arbitrary and unreasonable. That constitutional guarantee is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies to all those belonging to the same class. The purpose of the law is to allow the emergence of younger blood in local governments. The classification in question being pursuant to that purpose, it cannot be considered invalid "even if at times, it may be susceptible to the objection that it is marred by theoretical inconsistencies.[20] (Emphasis supplied, citations omitted)

In *Fariñas v. Executive Secretary*,[21] this Court held that there was no violation of the equal protection clause in Congress' repeal of a provision of a law pertaining to elective officials only, because substantial distinctions exist between elective officials and appointive officials:

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take part in any election except to vote. Under the same provision, elective

officials, or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities.

By repealing Section 67 but retaining Section 66 of the Omnibus Election Code, the legislators deemed it proper to treat these two classes of officials differently with respect to the effect on their tenure in the office of the filing of the certificates of candidacy for any position other than those occupied by them. Again, it is not within the power of the Court to pass upon or look into the wisdom of this classification.

Since the classification justifying Section 14 of Rep. Act No. 9006, i.e., elected officials vis-a-vis appointive officials, is anchored upon material and significant distinctions and all the persons belonging under the same classification are similarly treated, the equal protection clause of the Constitution is, thus, not infringed.[22] (Emphasis supplied)

Over time, three tests of judicial scrutiny were developed to determine reasonableness of classification:

Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications. The strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests.[23] (Emphasis in original, citations omitted)

I have expounded on these tests in my Separate Opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*:

The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.

Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] considered." This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is conceptually the least restrictive mechanism that the government may apply.

Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, actually — not only conceptually — being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.

....

The governmental interests to be protected must not only be reasonable. They must be compelling.[24]

In *People v. Jalosjos*,[25] this Court, applying strict scrutiny, found that election to the position of congressman is not a reasonable classification in criminal law enforcement:

The performance of legitimate and even essential duties by public officers has never been an excuse to free a person validly in prison. The duties imposed by the "mandate of the people" are multifarious. The accused-appellant asserts that the duty to legislate ranks highest in the hierarchy of government. The

accused-appellant is only one of 250 members of the House of Representatives, not to mention the 24 members of the Senate, charged with the duties of legislation. Congress continues to function well in the physical absence of one or a few of its members. Depending on the exigency of Government that has to be addressed, the President or the Supreme Court can also be deemed the highest for that particular duty. The importance of a function depends on the need for its exercise. The duty of a mother to nurse her infant is most compelling under the law of nature. A doctor with unique skills has the duty to save the lives of those with a particular affliction. An elective governor has to serve provincial constituents. A police officer must maintain peace and order. Never has the call of a particular duty lifted a prisoner into a different classification from those others who are validly restrained by law.

A strict scrutiny of classifications is essential lest wittingly or otherwise, insidious discriminations are made in favor of or against groups or types of individuals.

The Court cannot validate badges of inequality. The necessities imposed by public welfare may justify exercise of government authority to regulate even if thereby certain groups may plausibly assert that their interests are disregarded.

We, therefore, find that election to the position of Congressman is not a reasonable classification in criminal law enforcement. The functions and duties of the office are not substantial distinctions which lift him from the class of prisoners interrupted in their freedom and restricted in liberty of movement. Lawful arrest and confinement are germane to the purposes of the law and apply to all those belonging to the same class.[26] (Emphasis supplied, citations omitted)

In *Kabataan Party-List v. Commission on Elections*,^[27] this Court applied the strict scrutiny test since the biometrics validation requirement in the law affects the right of suffrage, and held that the regulation passed the strict scrutiny test:

Contrary to petitioners' assertion, the regulation passes the strict scrutiny test.

In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. As pointed out by petitioners, the United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access, and interstate travel.

Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same.

In this case, respondents have shown that the biometrics validation requirement under RA 10367 advances a compelling state interest. It was precisely designed to facilitate the conduct of orderly, honest, and credible elections by containing — if not eliminating, the perennial problem of having flying voters, as well as dead and multiple registrants. According to the sponsorship speech of Senator Aquilino L. Pimentel III, the objective of the law was to cleanse the national voter registry so as to eliminate electoral fraud and ensure that the results of the elections were truly reflective of the genuine will of the people. The foregoing consideration is unquestionably a compelling state interest.

Also, it was shown that the regulation is the least restrictive means for achieving the above-said interest. Section 6 of Resolution No. 9721 sets the procedure for biometrics validation, whereby the registered voter is only required to: (a) personally appear before the Office of the Election Officer; (b) present a competent evidence of identity; and (c) have his photo, signature, and fingerprints recorded. It is, in effect, a manner of updating one's registration for those already registered under RA 8189, or a first-time registration for new

registrants. The re-registration process is amply justified by the fact that the government is adopting a novel technology like biometrics in order to address the bane of electoral fraud that has enduringly plagued the electoral exercises in this country. While registrants may be inconvenienced by waiting in long lines or by not being accommodated on certain days due to heavy volume of work, these are typical burdens of voting that are remedied by bureaucratic improvements to be implemented by the COMELEC as an administrative institution. By and large, the COMELEC has not turned a blind eye to these realities. It has tried to account for the exigencies by holding continuous registration as early as May 6, 2014 until October 31, 2015, or for over a period of 18 months. To make the validation process as convenient as possible, the COMELEC even went to the extent of setting up off-site and satellite biometrics registration in shopping malls and conducted the same on Sundays. Moreover, it deserves mentioning that RA 10367 and Resolution No. 9721 did not mandate registered voters to submit themselves to validation every time there is an election. In fact, it only required the voter to undergo the validation process one (1) time, which shall remain effective in succeeding elections, provided that he remains an active voter. To add, the failure to validate did not preclude deactivated voters from exercising their right to vote in the succeeding elections. To rectify such status, they could still apply for reactivation following the procedure laid down in Section 28 of RA 8189.

That being said, the assailed regulation on the right to suffrage was sufficiently justified as it was indeed narrowly tailored to achieve the compelling state interest of establishing a clean, complete, permanent and updated list of voters, and was demonstrably the least restrictive means in promoting that interest.[28] (Emphasis supplied)

The strict scrutiny test has also been used when the regulation involves a "suspect class" defined as "a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." [29]

In *Central Bank v. Bangko Sentral ng Pilipinas*, [30] this Court applied the strict scrutiny test upon finding that the Bangko Sentral ng Pilipinas rank-and-file employees represent the politically powerless, and held that continued operation and implementation of the last proviso of Article II, Section 15(c) of Republic Act No. 7653 discriminated against the said employees warranting its declaration of unconstitutionality:

Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.

But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

....

In the case at bar, the challenged proviso operates on the basis of the salary grade or officer-employee status. It is akin to a distinction based on economic class and status, with the higher grades as recipients of a benefit specifically withheld from the lower grades. Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank — possessing higher and better education and opportunities for career advancement — are given higher compensation packages to entice them to stay. Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life

are less and limited, especially in terms of job marketability, it is they — and not the officers — who have the real economic and financial need for the adjustment. This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all." Any act of Congress that runs counter to this constitutional desideratum deserves strict scrutiny by this Court before it can pass muster.

To be sure, the BSP rank-and-file employees merit greater concern from this Court. They represent the more impotent rank-and-file government employees who, unlike employees in the private sector, have no specific right to organize as a collective bargaining unit and negotiate for better terms and conditions of employment, nor the power to hold a strike to protest unfair labor practices. Not only are they impotent as a labor unit, but their efficacy to lobby in Congress is almost nil as R.A. No. 7653 effectively isolated them from the other GFI rank-and-file in compensation. These BSP rank-and-file employees represent the politically powerless and they should not be compelled to seek a political solution to their unequal and iniquitous treatment. Indeed, they have waited for many years for the legislature to act. They cannot be asked to wait some more for discrimination cannot be given any waiting time. Unless the equal protection clause of the Constitution is a mere platitude, it is the Court's duty to save them from reasonless discrimination.[31] (Emphasis in the original)

In *Sameer Overseas Placement Agency, Inc. v. Cabiles*,[32] this Court also applied the standard of strict scrutiny test "for it perceive[d] in the subject clause a suspect classification prejudicial to OFWs" and the Constitution gives special protection to labor.

I submit that the strict scrutiny test should be used to determine whether there is reasonable classification in the Legislature's passage of the Party-List System Act, more particularly the assailed portion of Section 8, that is "[t]he list shall not include ... a person who has lost his bid for elective office in the immediately preceding election."

A democratic and republican state is founded on an election, which reflects and expresses the sovereign and genuine will of the people.[33] Thus, the opportunity to run for public office, and the rights and privileges arising from being elected, is governed and regulated by law.[34] Still, the opportunity to run and be elected for public office touches on two fundamental freedoms, those of expression and of association:

It is noteworthy to point out that the right to run for public office touches on two fundamental freedoms, those of expression and of association. This premise is best explained in *Mancuso v. Taft*, viz.:

Freedom of expression guarantees to the individual the opportunity to write a letter to the local newspaper, speak out in a public park, distribute handbills advocating radical reform, or picket an official building to seek redress of grievances. All of these activities are protected by the First Amendment if done in a manner consistent with a narrowly defined concept of public order and safety. The choice of means will likely depend on the amount of time and energy the individual wishes to expend and on his perception as to the most effective method of projecting his message to the public. But interest and commitment are evolving phenomena. What is an effective means for protest at one point in time may not seem so effective at a later date. The dilettante who participates in a picket line may decide to devote additional time and resources to his expressive activity. As his commitment increases, the means of effective expression changes, but the expressive quality remains constant. He may decide to lead the picket line, or to publish the newspaper. At one point in time he may decide that the most effective way to give expression to his views and to get the attention of an appropriate audience is to become a candidate for public office—means generally considered among the most appropriate for those desiring to effect change in our governmental systems. He may seek to become a candidate by filing in a general election as an independent or by seeking the nomination of a political party. And in the latter instance, the individual's expressive activity has two dimensions: besides urging that his views be the views of the elected public official, he is also attempting to become a spokesman for a political party whose substantive program extends beyond the particular office in question. But Cranston has said that a

certain type of its citizenry, the public employee, may not become a candidate and may not engage in any campaign activity that promotes himself as a candidate for public office. Thus the city has stifled what may be the most important expression an individual can summon, namely that which he would be willing to effectuate, by means of concrete public action, were he to be selected by the voters.

It is impossible to ignore the additional fact that the right to run for office also affects the freedom to associate. In *Williams v. Rhodes*, *supra*, the Court used strict review to invalidate an Ohio election system that made it virtually impossible for third parties to secure a place on the ballot. The Court found that the First Amendment protected the freedom to associate by forming and promoting a political party and that that freedom was infringed when the state effectively denied a party access to its electoral machinery. The Cranston charter provision before us also affects associational rights, albeit in a slightly different way. An individual may decide to join or participate in an organization or political party that shares his beliefs. He may even form a new group to forward his ideas. And at some juncture his supporters and fellow party members may decide that he is the ideal person to carry the group's standard into the electoral fray. To thus restrict the options available to political organization as the Cranston charter provision has done is to limit the effectiveness of association; and the freedom to associate is intimately related with the concept of making expression effective. Party access to the ballot becomes less meaningful if some of those selected by party machinery to carry the party's programs to the people are precluded from doing so because those nominees are civil servants.

Whether the right to run for office is looked at from the point of view of individual expression or associational effectiveness, wide opportunities exist for the individual who seeks public office. The fact of candidacy alone may open previously closed doors of the media. The candidate may be invited to discuss his views on radio talk shows; he may be able to secure equal time on television to elaborate his campaign program; the newspapers may cover his candidacy; he may be invited to debate before various groups that had theretofore never heard of him or his views. In short, the fact of candidacy opens up a variety of communicative possibilities that are not available to even the most diligent of picketers or the most loyal of party followers. A view today, that running for public office is not an interest protected by the First Amendment, seems to us an outlook stemming from an earlier era when public office was the preserve of the professional and the wealthy. Consequently we hold that candidacy is both a protected First Amendment right and a fundamental interest. Hence any legislative classification that significantly burdens that interest must be subjected to strict equal protection review.[35] (Citations omitted)

To democratize political power and give chance to political parties that cannot win in legislative district elections, the Constitution provides for the party-list system, and corollary, gives the voter the right to elect two representatives in the House of Representatives—one for his or her legislative district and another for his or her party-list group.[36] Undisputedly, there are substantial distinctions between a district representative or party-list representative, as clearly provided for in the Constitution:

Article VI

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

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

....

Article IX

C. The Commission on Elections

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

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

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

There are clear differences in terms of representation between those elected from legislative districts and those elected through the party-list system, as I explained in my Separate Opinion in *Atong Paglaum, Inc.*:^[37]

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

....

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

The differences in terms of representation are clear.

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

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

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

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

occur in the political party's philosophies in order to accommodate a viable candidate.

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

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

Historically, our electoral exercises privileged the popular and, perhaps, pedigreed individual candidate over platforms and political programs. Political parties were convenient amalgamation of electoral candidates from the national to the local level that gravitated towards a few of its leaders who could marshal the resources to supplement the electoral campaigns of their members. Most elections were choices between competing personalities often with very little discernible differences in their interpretation and solutions for contemporary issues. The electorate chose on the bases of personality and popularity; only after the candidates were elected to public offices will they later find out the concrete political programs that the candidate will execute. Our history is replete with instances where the programs that were executed lacked cohesion on the basis of principle. In a sense, our electoral politics alienated and marginalized large parts of our population.

The party list system was introduced to challenge the status quo. It could not have been intended to enhance and further entrench the same system. It is the party or the organization that is elected. It is the party list group that authorizes, hopefully through a democratic process, a priority list of its nominees. It is also the party list group that can delist or remove their nominees, and hence replace him or her, should he or she act inconsistently with the avowed principles and platforms of governance of their organization. In short, the party list system assists genuine political parties to evolve. Genuine political parties enable true representation, and hence, provide the potential for us to realize a "democratic and republican state".^[38] (Emphasis supplied, citations omitted)

The party-list system envisions genuine political parties to evolve in order to achieve effective representation in the Congress and in effect, help the nation realize being a "democratic and republican state."^[39] It aims to give representation and expression of interests and advocacies, which may not be within the main focus of those who represent legislative districts:

It is the nurturing ground to mature genuine political parties and give them the experience and the ability to build constituencies for other elective public offices.

In a sense, challenging the politics of personality by constitutionally entrenching the ability of political parties and organizations to instill party discipline can redound to the benefit of those who have been marginalized and underrepresented in the past. It makes it possible for nominees to be chosen on the basis of their loyalty to principle and platform rather than their family affiliation. It encourages more collective action by the membership of the party and hence will reduce the possibility that the party be controlled only by a select few.

Thus, it is not only "for the marginalized and underrepresented in our midst ... who wallow in poverty, destitution and infirmity" that the party list system was enacted. Rather, it was for everyone in so far as attempting a reform in our politics.

....

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

Also, political parties organized along ideological lines—the socialist or even right wing political parties—are groups motivated by their own narratives of our history, a vision of what society can be and how it can get

there. There is no limit to the economic class that can be gripped by the cogency of their philosophies and the resulting political platforms. Allowing them space in the House of Representatives if they have the constituency that can win them a seat will enrich the deliberations in that legislative chamber. Having them voice out opinions--whether true or false--should make the choices of our representatives richer. It will make the choices of our representatives more democratic.

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

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

Highlighting these groups in this opinion should not be mistaken as an endorsement of their platforms. Rather, it should be seen as clear examples where interests and advocacies, which may not be within the main focus of those who represent legislative districts, cry out for representation.[40] (Citations omitted)

To have an effective representation, to take part in the conduct of public affairs, to vote and to be elected, and to have access to public service are subsumed under the right to electoral participation, provided in our international obligations under the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR):

The UDHR provides:

Article 21.

(1)

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Likewise, the ICCPR states:

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a)

To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b)

To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c)

To have access, on general terms of equality, to public service in his country.

[T]he scope of the right to electoral participation is elaborated by the Human Rights Committee in its General

Comment No. 25 (Participation in Public Affairs and the Right to Vote) as follows:

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

....

15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.[41]

Since the party-list system involves the fundamental principle of our nation and touches on the fundamental rights to electoral participation, freedom of expression and association, the strict scrutiny should be used to determine whether there is reasonable classification in the law.

Moreover, there is suspect class involved, or "a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." [42] These are the groups, whose interests and advocacies may not be within the main focus of those who represent legislative districts historically, crying out for representation but relegated to a position of political powerlessness due to our history of favoring popular and pedigreed individuals in electoral exercises.

I submit that using strict scrutiny, the assailed portion of Section 8 of the Party-List System Act, particularly "[t]he list shall not include ... a person who has lost his bid for elective office in the immediately preceding election," is constitutional and not violative of the equal protection clause. There is reasonable classification for those who have lost in their bid for an elective office in the immediately preceding election, so as to prohibit them from becoming party-list nominees, contrary to petitioners' claim.[43]

The strict scrutiny test requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored—being the least restrictive means for effecting the invoked interest.[44] In *Pamatong v. Commission on Elections*, [45] this Court held that the State could exclude nuisance candidates, or those candidates who have not evinced a bona fide intention to run for office, due to the compelling interest to ensure that the electoral exercises are rational, objective, orderly, and credible:

The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a bona fide intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. As the United States Supreme Court held:

[T]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization and its candidates on the ballot — the interest, if no other, in avoiding confusion, deception and even frustration of the democratic [process].

....

Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with bona fide candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. This is not to mention the candidacies which are palpably ridiculous so as to constitute a one-note joke. The poll body would be bogged by irrelevant minutiae covering every step of the electoral process, most probably posed at the instance of these nuisance candidates. It would be a senseless sacrifice on the part of the State.

Owing to the superior interest in ensuring a credible and orderly election, the State could exclude nuisance candidates and need not indulge in, as the song goes, "their trips to the moon on gossamer wings."

The Omnibus Election Code and COMELEC Resolution No. 6452 are cognizant of the compelling State interest to ensure orderly and credible elections by excising impediments thereto, such as nuisance candidacies that distract and detract from the larger purpose. The COMELEC is mandated by the Constitution with the administration of elections and endowed with considerable latitude in adopting means and methods that will ensure the promotion of free, orderly and honest elections. Moreover, the Constitution guarantees that only bona fide candidates for public office shall be free from any form of harassment and discrimination. The determination of bona fide candidates is governed by the statutes, and the concept, to our mind is, satisfactorily defined in the Omnibus Election Code.[46]

Similarly, in my view, persons who have lost their bid for elective office in the immediately preceding election should be excluded as nominees of their party-list, due to the State's compelling interest to "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" as stated in the policy statement of The Party-List System Act:

SECTION 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 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.

Indeed, it is the policy of the State to broaden electoral opportunities and possible representation of interests in Congress, through the party-list system, such that even those who could not win in the legislative district elections will be given a fair chance to enter and to have a voice in Congress. Thus, those who lost in the previous elections are not necessarily prohibited from becoming party-list nominees, but only those who ran and lost in an elective office in the immediately preceding elections are singled out by the law. This is the least restrictive means for effecting the invoked compelling interest. As pointed out by respondent, through the Office of the Solicitor General, those who lost in the immediately preceding elections "will be more inclined to seek alternative ways to secure public office" and use the party--list as a mechanism to secure public office after having lost in such elections.[47] The ponente likewise pointed out that the purpose would be to limit, discourage, and disallow the

abuse of the party-list system as a fallback measure for traditional politicians to serve in an elective position.[48] Thus, to allow those persons who just ran and lost in the immediately preceding election to be nominated in the immediately succeeding election will patently run counter to the law's policy and intent, as it will be unlikely to enhance the "chances to compete for and win seats in the legislature."

Therefore, the assailed provision prohibiting a person who has lost his bid for elective office in the immediately preceding election from becoming a party-list nominee was sufficiently justified as it was indeed narrowly tailored to achieve the compelling state interest of establishing "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" and was demonstrably the least restrictive means in promoting that interest—only those who lost in the immediately preceding election are prohibited from being nominated.

In any case, all reasonable doubts should be resolved in favor of the constitutionality of a statute, being an act by the Legislature, approved by the Executive:

This court is not unmindful of the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute. An act of the legislature approved by the executive, is presumed to be within constitutional limitations. The responsibility of upholding the Constitution rests not on the courts alone but on the legislature as well. "The question of the validity of every statute is first determined by the legislative department of the government itself." And a statute finally comes before the courts sustained by the sanction of the executive. The members of the Legislature and the Chief Executive have taken an oath to support the Constitution and it must be presumed that they have been true to this oath and that in enacting and sanctioning a particular law they did not intend to violate the Constitution. The courts cannot but cautiously exercise its power to overturn the solemn declarations of two of the three grand departments of the government. Then, there is that peculiar political philosophy which bids the judiciary to reflect the wisdom of the people as expressed through an elective Legislature and an elective Chief Executive. It follows, therefore, that the courts will not set aside a law as violative of the Constitution except in a clear case. This is a proposition too plain to require a citation of authorities.[49] (Emphasis supplied, citations omitted)

The presumption of constitutionality can only be overcome by sufficient proof of clear and unequivocal breach of the Constitution:

To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on ... baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

....

"[A]ll presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted." [50]

A party challenging the law must present concrete evidence and convincing argument of arbitrariness:

No concrete evidence and convincing argument were presented to warrant a declaration of an act of the entire Congress and signed into law by the highest officer of the co-equal executive department as unconstitutional. Every classification made by law is presumed reasonable. Thus, the party who challenges the law must present proof of arbitrariness.

It is an established precept in constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification.

....

The challengers of Sections 4 and 7 of R.A. 8249 failed to rebut the presumption of constitutionality and reasonableness of the questioned provisions. The classification between those pending cases involving the concerned public officials whose trial has not yet commenced and whose cases could have been affected by the amendments of the Sandiganbayan jurisdiction under R.A. 8249, as against those cases where trial had already started as of the approval of the law, rests on substantial distinction that makes real differences.[51] (Citations omitted)

In failing to present concrete evidence and convincing argument of arbitrariness, petitioners patently failed to discharge the burden to overcome the presumption of constitutionality of the phrase "a person who has lost his bid for elective office in the immediately preceding election" stated in Section 8 of Republic Act No. 7941.

Consequently, respondent Commission on Elections did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in also providing that the list of nominees shall not include those "who has lost his [or her] bid for an elective office in the May 13, 2019 National and Local Elections" in its issued Commission on Elections Resolution No. 10717, or the "Rules And Regulations Governing: (1) Political Conventions; (2) Submission of Nominees of Groups or Organizations participating under the Party-List System of Representation; and (3) Filing of Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in Connection with the May 9, 2022 National and Local Elections."

"There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment, as when the assailed order is bereft of any factual and legal justification." [52] In *Lokin, Jr. v. Commission on Elections*, [53] the Commission on Elections promulgated its "Rules on Disqualification Cases Against Nominees of Party-List Groups/Organizations Participating in the 10 May 2010 Automated National and Local Elections" by virtue of the mandate of the Party-List System Act, under Sections 8 and 9, vesting the Commission on Elections with jurisdiction over the nomination of party-list representatives and prescribing the qualifications of each nominee.

Since the Party-list System Act was enacted, the Commission on Elections by virtue of its constitutional mandate to enforce and administer election laws [54] issued Rules and Regulations governing Submission of Names of Nominees under the Party-List System, among other rules, for the National and Local Elections, specifically: Resolution No. 3307-A for the May 2001 elections; Resolution No. 6320 for the May 2004 elections; Resolution No. 7084 for the May 2007 elections; Resolution No. 8807 for the May 2010 elections; Resolution No. 9366 for the May 2013 elections; Resolution No. 9984 for the May 2016 elections; and Resolution No. 10420 for the May 2019 elections. The mentioned Resolutions included the assailed phrase in the present Petitions as a limitation to the list of nominees to be submitted by the party-lists. [55]

Based on the above reasons, there is factual and legal justification for respondent Commission on Elections' issuance of Resolution No. 10717, providing that the list of nominees of the party-lists shall not include those "who has lost his [or her] bid for an elective office in the May 13, 2019 National and Local Elections." Therefore,

respondent Commission on Elections did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

ACCORDINGLY, I vote to DENY the Petitions.

[1] 888 Phil. 434 (2020) [Per J. Leonen, En Banc].

[2] Id. at 469-471, 472.

[3] Id. at 470-471.

[4] Information Technology Foundation of the Phils. v. Commission on Elections, 499 Phil. 281, 304 (2005) [Per J. Panganiban, En Banc].

[5] Timbol v. Commission on Elections, 754 Phil. 578, 584-585 (2015) [Per J. Leonen, En Banc].

[6] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

[7] Id. at 249-250.

[8] Lagman v. Ochoa, Jr., 888 Phil. 434, 476 (2020) [Per J. Leonen, En Banc].

[9] Rollo (G.R. No. 257610), p. 9.

[10] Id. at 10.

[11] Pamatong v. Commission on Elections, 470 Phil. 711 (2004) [Per J. Tinga, En Banc].

[12] Rollo (UDK 17230), p. 7; Rollo (G.R. No. 257610), p. 8.

[13] J. Leonen, Concurring and Dissenting Opinion in Social Justice Society Officers v. Lim, 748 Phil. 25, 155-156 (2014) [Per J. Perez, En Banc].

[14] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205, 257 (2018) [Per J. Leonen, En Banc].

[15] Zomer Development Co. Inc. v. Special Twentieth Division of the Court of Appeals, 868 Phil. 93, 113, (2020) [Per J. Leonen, En Banc] citing Ichong v. Hernandez, 101 Phil. 1155, 1164 (1957) [Per J. Labrador, En Banc].

[16] Ichong v. Hernandez, 101 Phil. 1155, 1164 (1957) [Per J. Labrador, En Banc].

[17] Victoriano v. Elizalde Rope Workers' Union, 158 Phil. 60, 86-88 (1974) [Per J. Zaldivar, En Banc].

[18] Ichong v. Hernandez, 101 Phil. 1155, 1176-1177 (1957) [Per J. Labrador, En Banc].

[19] 184 Phil. 369 (1980) [Per J. Melencio-Herrera, En Banc].

[20] Id. at 381-382.

[21] 463 Phil. 179 (2003) [Per J. Callejo, Sr., En Banc].

[22] Id. at 206-208.

[23] Samahan ng mga Progresibong Kabataan v. Quezon City, 815 Phil. 1067, 1113-1114 (2017) [Per J. Perlas-Bernabe, En Banc].

- [24] J. Leonen, Separate Opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1147-1148, 1159 (2017) [Per J. Perlas-Bernabe, En Banc].
- [25] 381 Phil. 690 (2000) [Per J. Ynares-Santiago, En Banc].
- [26] *Id.* at 707-708.
- [27] 775 Phil. 523 (2015) [Per J. Perlas-Bernabe, En Banc].
- [28] *Id.* at 551-555.
- [29] *Zomer Development Co. Inc. v. Special Twentieth Division of the Court of Appeals*, 868 Phil. 93, 115, (2020) [Per J. Leonen, En Banc].
- [30] 487 Phil. 531 (2004) [Per J. Puno, En Banc].
- [31] *Id.* at 599-602.
- [32] 740 Phil. 403 (2014) [Per J. Leonen, En Banc].
- [33] J. Leonen, Concurring and Dissenting Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 738 (2013) [Per J. Carpio, En Banc].
- [34] *Pamatong v. Commission on Elections*, 470 Phil. 711, 715-716 (2004) [Per J. Tinga, En Banc]; *People v. Jalosjos*, 381 Phil. 690 (2000) [Per J. Ynares-Santiago, En Banc].
- [35] *Quinto v. Commission on Elections*, 621 Phil. 236, 270-272 (2009) [Per J. Nachura, En Banc].
- [36] *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 528 (2013) [Per J. Carpio, En Banc].
- [37] J. Leonen, Concurring and Dissenting Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454 (2013) [Per J. Carpio, En Banc].
- [38] *Id.* at 738-741.
- [39] *Id.*; CONST., art. II, sec. 1.
- [40] *Id.* at 741-744.
- [41] *Ang Ladlad LGBT Party v. Commission on Elections*, 632 Phil. 32, 88-90 (2010) [Per J. Del Castillo, En Banc].
- [42] *Zomer Development Co. Inc. v. Special Twentieth Division of the Court of Appeals*, 868 Phil. 93, 115, (2020) [Per J. Leonen, En Banc].
- [43] Rollo (G.R. No. 257610), p. 20; Rollo (UDK 17230), p. 9.
- [44] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].
- [45] 470 Phil. 711 (2004) [Per J. Tinga, En Banc].
- [46] *Id.* at 719-722.
- [47] Rollo (UDK 17230), p. 10.
- [48] Ponencia, p. 18.

[49] *People v. Vera*, 65 Phil. 56, 95 (1937) [Per J. Laurel, First Division].

[50] *Lawyers against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, 686 Phil. 357, 373, 376-377 (2012) [Per J. Mendoza, En Banc].

[51] *Lacson v. Executive Secretary*, 361 Phil. 251, 271-272 (1999) [Per J. Martinez, En Banc].

[52] *The Senate Blue Ribbon Committee v. Majaducon*, 455 Phil. 61, 71 (2003) [Per J. Ynares-Santiago, En Banc].

[53] 689 Phil. 200 (2012) [Per J. Sereno, En Banc].

[54] CONST., art. IX(C), sec. 2(1).

[55] See Commission on Elections Resolution No. 10420, Section 5; Resolution No. 9984, Rule 1, Section 5; Resolution No. 9366, Rule 4, Sec. 5; Resolution No. 8807, Section 7; Resolution No. 7084, Section 10; Resolution No. 6320; and Resolution No. 3307, Sec. 15(c).

CONCURRING OPINION

CAGUIOA, J.:

Before the Court are two (2) consolidated Petitions for Certiorari and Prohibition (Consolidated Petitions) filed pursuant to Rule 65 of the Rules of Court.

In G.R. No. 257610, petitioner Glenn Quintos Albano (Albano) ran for councilor of Taguig City in the 2019 elections. He lost. He later became the second nominee of the sectoral party Talino at Galing ng Pinoy Party--List for the 2022 National and Local Elections (2022 elections).

In UDK 17230, petitioner Catalina G. Leonen-Pizarro (Pizarro) ran for mayor of Municipality of Sudipen, La Union in the 2019 elections. She lost. She later became the first nominee of Arts, Business and Science Professionals Party-List for the 2022 elections.

However, the nominations of both Albano and Pizarro (petitioners) were disallowed under Section 8[1] of Republic Act No. (RA) 7941,[2] and its implementing rules, Sections 5(d)[3] and 10[4] of the Commission on Elections (COMELEC) Resolution No. 10717.[5] These provisions prohibit "a person who has lost his bid for an elective office in the immediately preceding election" from being included in the list of party-list nominees.

Petitioners thus come before the Court on petitions for certiorari challenging the constitutionality of the aforementioned law and rules on two (2) grounds: 1) that they impose an additional qualification for party-list nominees, thus violating the exhaustive list of qualifications under Section 6,[6] Article VI of the 1987 Constitution, following the Court's ruling in *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*[7] (SJS); and 2) that they are violative of the equal protection clause.

The ponencia grants the Consolidated Petitions and declares as invalid and unconstitutional:[8]

(1)

the phrase "a person who has lost his bid for elective office in the immediately preceding election" under Section 8 of RA 7941;

(2)

the phrase "have lost in their bid for an elective office in the May 13, 2019 National and Local Elections" under Section 5(d) of COMELEC Resolution No. 10717; and

(3)

the phrase "or a person who has lost his bid for an elective office in the May 13, 2019 National and Local Elections" under Section 10 of COMELEC Resolution No. 10717.[9]

I concur in the disposition of the ponencia. The assailed provisions fail to demonstrate a rational basis for the classification made between party--list nominees who lost in the previous election versus those who won or did not participate therein. Further, the prohibition against such election losers from participating in the party-list system is repugnant to the policy behind such system of representation. As such, I concur that the assailed law and its implementing rules are indeed unconstitutional for violating the equal protection clause.

The intent of the framers of the 1987 Constitution behind Section 5(1) is to empower the Congress to add qualifications for party-list representatives.

Section 5(1), Article VI of the 1987 Constitution (Section 5[1]), states:

Sec. 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 supplied)

A review of the deliberations of the Constitutional Commission reveals that the framers of the 1987 Constitution determined the Congress to be in the best position to draft, study, and enact the details regarding the implementation of the party-list system. The following exchange between Commissioners Soc Rodrigo and Christian S. Monsod enlightens:

MR. RODRIGO. x x x In the light of the phrase "AS PROVIDED BY LAW," do I take it that this party list system and sectoral representation provision will not take effect until an enabling act or an implementing legislation shall have been enacted by Congress?

MR. MONSOD. Madam President, the first Assembly will be in March or April. But when we say, "AS PROVIDED BY LAW," it could really mean that it may be by ordinance appended to this constitution or an executive order by the incumbent President or, as the Gentleman has said, by law provided by the incoming Congress. So, it could be any of these ways.

MR. RODRIGO. Madam President, we are all witnesses to the difficulty in arriving at a consensus of these very novel ideas on the disputes that we have had. And up to now, there is no real consensus yet. Does the Commissioner believe that we should really try to go into the details by enacting an ordinance to the Constitution? x x x

MR. MONSOD. We just want to establish the principle of the party list system with sectoral representation in the present Constitution. x x x

MR. RODRIGO. Considering our time constraint and the many other provisions that we have not yet discussed, does the Commissioner believe that we are in a position to draft, study, and enact a virtual piece of legislation, with all details, regarding the implementation of this party-list system and sectoral representation,

so that it will be finished in time for the approval of this Constitution? Should we not abandon that idea and leave this matter to the legislature?

MR. MONSOD. I believe that it is really not a very complicated system, and it is possible. But I will yield to the time problem, if there is really a time problem. Certainly, I do not think that this Commission would want to put an ordinance that is half-baked.[10] (Emphasis and underscoring supplied)

As can be gleaned from the foregoing, the framers' penultimate goal is to have a party-list system. With respect, however, to the details as to its implementation, the same was envisioned to be appended to the Constitution or, in the alternative, to be enacted by the President or the legislature. This evinces the intent of the framers to delegate the broad power of formulating rules operationalizing the party-list system, in the event that the same could not be made part of the Constitution.

As ratified, the 1987 Constitution only provides the manner of filling the seats reserved for sectoral representation, i.e., by appointment of the President from a list of nominees by the respective sectors, "until a law is passed." [11]

Accordingly, I agree that Congress, by express language of Section 5(1), is empowered to determine who shall be elected through the party-list system, and corollary thereto, to determine the qualifications of the party-list representatives elected under this system.

Any additional qualification provided by statute is subject to the general limitations on legislation, including the equal protection clause. The proper test to determine the reasonableness of the classification is the rational basis test.

Notably, even if Section 5(1) empowers Congress to define and prescribe the mechanics of the party-list system of representation [12] and to expand the qualifications for membership in the House of Representatives (HOR), any additional qualification imposed by Congress must still yield to the general limitations on legislation. [13]

Here, petitioners argue that the exclusion of individuals who lost in the immediately preceding election from the list of nominees for party-list representatives under the assailed provisions violates the equal protection clause. [14] Meanwhile, the COMELEC, through the Office of the Solicitor General (OSG), argues that by virtue of Section 5(1), there is a clear distinction between the members of the HOR who are elected from legislative districts vis-à-vis those who are elected through the party-list system, and that such distinction is valid as it serves a legitimate purpose – preventing persons from merely using the party-list system as a mechanism to secure public office after having lost in the previous elections. [15]

In numerous instances, the Court has explained that the fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. [16] It is not a guaranty of equality in the application of the laws upon all citizens of the state and does not require that, in order to avoid the constitutional prohibition against inequality, every man, woman, and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. [17]

In the leading case of *Ichong v. Hernandez*, [18] the Court explained the nature of the equal protection guarantee in this wise:

The equal protection of the law clause is against undue favor and individual or class privilege, as well as

hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either [by] the object to which it is directed or by [the] territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not. x x x.[19] (*Italics in the original*)

In other words, for a classification to be valid and reasonable, it must: (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.[20] To determine whether such classification is reasonable, the Court has formulated three tests, namely: (1) the strict scrutiny test; (2) the intermediate scrutiny test; and (3) the rational basis test.[21]

The strict scrutiny test applies when a classification either interferes with the exercise of fundamental rights, which includes the basic liberties guaranteed under the Constitution, or burdens suspected classes.[22] The intermediate scrutiny test applies when a classification does not involve suspected classes or fundamental rights, but requires a heightened scrutiny, such as in classifications based on gender and legitimacy.[23] Lastly, the rational basis test applies to all other subjects not covered by the first two tests.[24]

Under most circumstances, the Court exercises judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power.[25] Judicial scrutiny would usually be based on the rational basis test, and the legislative discretion would be given deferential treatment.[26] However, if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict[27] and thus, the Court uses the strict scrutiny test or the intermediate scrutiny test, depending on the circumstances.

I agree with the ponencia that the rational basis test is the appropriate test to use in the instant case.[28] As it correctly observed, "one's interest in seeking office, by itself, is not entitled to constitutional protection." [29] I agree that whether expressly or implicitly, the Constitution does not guarantee a fundamental right to run for public office that would call for the application of the strict scrutiny test.

Fundamental rights, once described as liberties that operate as trumps,[30] have no exact or precise definition in our own jurisdiction as well as in United States (US) jurisdiction.[31] This notwithstanding, there appears little disagreement as to the fundamental nature of an asserted liberty interest when the same can be read from the text of the Bill of Rights of the Constitution itself.[32] The disagreement does arise in cases where an asserted liberty interest, which is not textually found in the Constitution or is otherwise unenumerated, is nonetheless regarded as fundamental. As the Supreme Court of the United States (SCOTUS) observed in *Bowers v. Hardwick*,[33] despite the language of the Due Process Clauses of the Fifth and Fourteenth Amendments in the US Constitution, which appears to focus only on the processes by which life, liberty, or property is taken, these Clauses have been interpreted, in numerous cases, to have substantive content. Consequently, rights which are, to a great extent, immune from federal or state regulation or proscription are subsumed to these Clauses and are likewise recognized as fundamental.

Under our jurisdiction, the presence of unenumerated fundamental rights has also certainly been recognized. In his Separate Opinion in *Versosa v. People*,[34] Retired Supreme Court Associate Justice Francis H. Jardeleza (J. Jardeleza), noted that the Court had, on some occasions, ruled on assertions of these rights. These include the right to enter into (and terminate) contracts in the early case of *People v. Pomar*,[35] the right to personal privacy in *Morfe v. Mutuc*,[36] the right to a balanced and healthful ecology in *Oposa v. Hon. Factoran, Jr.*,[37] the right of

parents to exercise parental control over their minor child and the liberty interest in the access to safe and non-abortifacient contraceptives in *Spouses Imbong v. Hon. Ochoa, Jr.*,^[38] the woman's right to choose whether to marry and to decide whether she will bear and rear her child outside of marriage in *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*,^[39] and the liberty interest on the part of a Filipino spouse to be recapacitated to marry in *Republic v. Manalo*.^[40]

J. Jardeleza pertinently cautioned, however, that should the Court recognize and accord the status of a fundamental right to an asserted but unenumerated liberty interest, it must be through a deliberate and open approach due to an ostensible lack of clear guidelines, in our own jurisdiction and even in US jurisdiction, on how such rights are located.

The SCOTUS is, indeed, circumspect in this endeavor. It admits to having "always been reluctant to expand the concept of substantive due process because guideposts for responsible decision[-]making in [such] an uncharted area are scarce and open-ended."^[41] The reluctance of the SCOTUS also stems from the humble recognition that by extending constitutional protection to an asserted right or liberty, courts, to a great extent, place the matter outside the arena of public debate and legislative action.^[42] As such, the SCOTUS acknowledges that it should exercise utmost care in identifying an unenumerated and fundamental right lest the liberty protected by the Constitution be subtly transformed into mere policy preferences of its members.^[43]

Thus, in *Washington v. Glucksberg*,^[44] the SCOTUS recounted the two primary features of its established method of substantive due process analysis, to wit:

x x x First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," x x x ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," x x x. Second, we have required in substantive-due-process cases a "careful description" of the asserted fundamental liberty interest. x x x Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decision[-]making," x x x that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."^[45] (Emphasis supplied, and citations and italics omitted)

Here, to reiterate, the right to run or to be voted for in public office is neither expressly nor implicitly granted in our Constitution. Nowhere in the Constitution does it unequivocally say so.

It may appear that Section 26, Article II of the 1987 Constitution grants otherwise when it provides, in part, that "[t]he State shall guarantee equal access to opportunities for public service x x x." This, however, has already been settled or interpreted by the Court in the negative.

In *Timbol v. COMELEC*^[46] (*Timbol*), the Court declared that the guarantee under Article II, Section 26 of the 1987 Constitution is not a guarantee to a constitutional right to run for public office. To run for public office, it said, is a mere privilege subject to limitations imposed by law.

Timbol, in turn, relied on an earlier case, *Rev. Pamatong v. COMELEC*^[47] (*Pamatong*), from which the foregoing disquisition came. The common issue in *Timbol* and *Pamatong* dwelled on whether nuisance candidates may be prohibited or excluded from participating in the elections, despite the existence of Section 26, Article II of the 1987 Constitution. Ruling in the affirmative, *Pamatong* elaborated on the validity of such prohibition in this way:

Implicit in the petitioner's invocation of the constitutional provision ensuring "equal access to opportunities for

public office" is the claim that there is a constitutional right to run for or hold public office and, particularly in his case, to seek the presidency. There is none. What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort.

The "equal access" provision is a subsumed part of Article II of the Constitution, entitled "Declaration of Principles and State Policies." The provisions under the Article are generally considered not self-executing, and there is no plausible reason for according a different treatment to the "equal access" provision. Like the rest of the policies enumerated in Article II, the provision does not contain any judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action. The disregard of the provision does not give rise to any cause of action before the courts.

An inquiry into the intent of the framers produces the same determination that the provision is not self-executory. The original wording of the present Section 26, Article II had read, "The State shall broaden opportunities to public office and prohibit public dynasties." Commissioner (now Chief Justice) Hilario Davide, Jr. successfully brought forth an amendment that changed the word "broaden" to the phrase "ensure equal access," and the substitution of the word "office" to "service." He explained his proposal in this wise: I changed the word "broaden" to "ENSURE EQUAL ACCESS TO" because what is important would be equal access to the opportunity. If you broaden, it would necessarily mean that the government would be mandated to create as many offices as are possible to accommodate as many people as are also possible. That is the meaning of broadening opportunities to public service. So, in order that we should not mandate the State to make the government the number one employer and to limit offices only to what may be necessary and expedient yet offering equal opportunities to access to it, I change the word "broaden."

Obviously, the provision is not intended to compel the State to enact positive measures that would accommodate as many people as possible into public office. The approval of the "Davide amendment" indicates the design of the framers to cast the provision as simply enunciatory of a desired policy objective and not reflective of the imposition of a clear State burden.

Moreover, the provision as written leaves much to be desired if it is to be regarded as the source of positive rights. It is difficult to interpret the clause as operative in the absence of legislation since its effective means and reach are not properly defined. Broadly written, the myriad of claims that can be subsumed under this rubric appear to be entirely open-ended. Words and phrases such as "equal access," "opportunities," and "public service" are susceptible to countless interpretations owing to their inherent impreciseness. Certainly, it was not the intention of the framers to inflict on the people an operative but amorphous foundation from which innately unenforceable rights may be sourced.

As earlier noted, the privilege of equal access to opportunities to public office may be subjected to limitations. Some valid limitations specifically on the privilege to seek elective office are found in the provisions of the Omnibus Election Code [(OEC)] on "Nuisance Candidates" and COMELEC Resolution No. 6452 dated December 10, 2003 outlining the instances wherein the COMELEC may *motu proprio* refuse to give due course to or cancel a Certificate of Candidacy.

As long as the limitations apply to everybody equally without discrimination, however, the equal access clause is not violated. Equality is not sacrificed as long as the burdens engendered by the limitations are meant to be borne by anyone who is minded to file a certificate of candidacy. In the case at bar, there is no showing that any person is exempt from the limitations or the burdens which they create.^[48] (Citations omitted, emphasis supplied, and italics in the original)

Consistent with the foregoing interpretation as to the asserted right to run for public office, the Court, in *Aratea v.*

COMELEC,[49] notably equated the privilege with simply having the eligibility for the public office. In said case, Section 74 of the OEC was put into the fore in light of a candidate's alleged false material representation in his Certificate of Candidacy (CoC). Said candidate certified under oath that he was eligible for the office he sought election despite having been elected and having served for four consecutive terms already immediately prior to the term for the relevant election period. The Court ruled accordingly:

Section 74 requires the candidate to certify that he is eligible for the public office he seeks election. Thus, Section 74 states that "the certificate of candidacy shall state that the person filing x x x is eligible for said office." The three-term limit rule, enacted to prevent the establishment of political dynasties and to enhance the electorate's freedom of choice, is found both in the Constitution and the law. After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is ineligible. One who has an ineligibility to run for elective public office is not "eligible for [the] office." As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.[50] (Citation and emphasis omitted, and underscoring supplied)

In the same vein, the question as to whether there is an implicitly recognized fundamental right to run for public office has likewise been settled by the Court in another case, *Quinto v. COMELEC*[51] (*Quinto*). What was assailed in said case was COMELEC Resolution No. 8678 on the Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections. Petitioners therein, who were appointive public officials, questioned Section 4(a) of COMELEC Resolution No. 8678, which provided for the effects of filing of CoCs, to wit:

SEC. 4. Effects of Filing Certificates of Candidacy. – a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.

The Court initially declared Resolution No. 8678 unconstitutional for violating the equal protection clause and for being overbroad. On reconsideration, however, the Court reversed its original decision, taking its cue from the US jurisprudence where the right to run for public office was being anchored on the fundamental freedoms of expression and association. It held that the right to run for public office is not accorded a constitutional guarantee as its purported ties with the other well-settled and recognized fundamental freedoms of expression and association are tenuous. Thus:

Accordingly, our assailed Decision's submission that the right to run for public office is "inextricably linked" with two fundamental freedoms – those of expression and association – lies on barren ground. American case law has in fact never recognized a fundamental right to express one's political views through candidacy, as to invoke a rigorous standard of review. *Bart v. Telford* pointedly stated that "[t]he First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either." Thus, one's interest in seeking office, by itself, is not entitled to constitutional protection. Moreover, one cannot bring one's action under the rubric of freedom of association, absent any allegation that, by running for an elective position, one is advancing the political ideas of a particular set of voters.

Prescinding from these premises, it is crystal clear that the provisions challenged in the case at bar, are not violative of the equal protection clause. The deemed-resigned provisions substantially serve governmental interests (i.e., (i) efficient civil service faithful to the government and the people rather than to party; (ii) avoidance of the appearance of "political justice" as to policy; (iii) avoidance of the danger of a powerful political machine; and (iv) ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity). These are interests that are important enough to outweigh the non-fundamental right of appointive officials and employees to seek elective

office.[52] (Citations omitted, emphasis in the original, and underscoring supplied)

Quinto took note of the cases decided by the SCOTUS, *United States Civil Service Commission v. National Association of Letter Carriers AFL--CIO*[53] (Letter Carriers) and *Broadrick v. State of Oklahoma*[54] (Broadrick), which both impugned the constitutionality of statutory provisions prohibiting federal and state employees, under pain of dismissal and possible criminal sanctions, from taking an active part in political management or in political campaigns. Specifically, these prohibited acts were with regard to announcements of candidacy for nomination or election to local office.

In *Letter Carriers*, the plaintiffs challenged the enforcement by the Civil Service Commission of a prohibition under the so-called Hatch Act against active participation in political management or political campaigns which said plaintiffs desired to engage in. In particular, these desired activities included campaigning for candidates for public office, running for state and local offices, and participating as a delegate in a party convention or holding office in a political club. In upholding the constitutionality of the ban, the SCOTUS significantly explained:

We unhesitatingly reaffirm the x x x holding that Congress had, and has, the power to prevent x x x others x x x from holding a party office, working at the polls, and acting as party paymaster for other party workers. An Act of Congress going no farther would, in our view, unquestionably be valid. So would it be if, in plain and understandable language, the statute forbade activities such as organizing a political party or club; actively participating in fund-raising activities for a partisan candidate or political party; becoming a partisan candidate for, or campaigning for, an elective public office; actively managing the campaign of a partisan candidate for public office; initiating or circulating a partisan nominating petition or soliciting votes for a partisan candidate for public office; or serving as a delegate, alternate or proxy to a political party convention. Our judgment is that neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.

Such decision on our part would no more than confirm the judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited. That this judgment eventuated is indisputable, and the major steps in reaching it may be simply and briefly set down.[55] (Emphasis supplied)

In *Broadrick*, on the other hand, state employees charged by the Oklahoma State Personnel Board with actively engaging in partisan political activities among their coworkers for the benefit of their superior, in alleged violation of § 818 of the Oklahoma's Merit System of Personnel Administration Act, challenged the Act's validity on the grounds that two of its paragraphs were overbroad and vague. One of these paragraphs especially provided that no such employee shall belong to 'any national, state or local committee of a political party' or be an officer or member of a committee or a partisan political club, or a candidate for any paid public office, or take part in the management or affairs of any political party or campaign 'except to exercise his right as a citizen privately to express his opinion and vote.' The SCOTUS likewise upheld the constitutionality of the assailed Section in the Act, discerning that it restricted the political activities of the State's classified civil servants in much the same manner that the Hatch Act, the challenged Act in *Letter Carriers*, proscribed partisan political activities of federal employees. The SCOTUS thus held:

Unlike ordinary breach-of-the-peace statutes or other broad regulatory acts, § 818 is directed, by its terms, at political expression which if engaged in by private persons would plainly be protected by the First and Fourteenth Amendments. But at the same time, § 818 is not a censorial statute, directed at particular groups or viewpoints. The statute, rather, seeks to regulate political activity in an even-handed and neutral manner. As indicted, such statutes have in the past been subject to a less exacting overbreadth scrutiny. Moreover, the fact remains that § 818 regulates a substantial spectrum of conduct that is as manifestly subject to state regulation

as the public peace or criminal trespass. This much was established in *United Public Workers v. Mitchell*, and has been unhesitatingly reaffirmed today in *Letter Carriers x x x*. Under the decision in *Letter Carriers*, there is no question that § 818 is valid at least insofar as it forbids classified employees from: soliciting contributions for partisan candidates, political parties, or other partisan political purposes; becoming members of national, state, or local committees of political parties, or officers or committee members in partisan political clubs, or candidates for any paid public office; taking part in the management or affairs of any political party's partisan political campaign; serving as delegates or alternates to caucuses or conventions of political parties; addressing or taking an active part in partisan political rallies or meetings; soliciting votes or assisting voters at the polls or helping in a partisan effort to get voters to the polls; participating in the distribution of partisan campaign literature; initiating or circulating partisan nominating petitions; or riding in caravans for any political party or partisan political candidate.[56] (Emphasis supplied)

Hence, the Court in *Quinto* observed that the SCOTUS in *Letter Carriers* and *Broadrick* declared the assailed provisions in said cases compliant with the equal protection clause:

x x x [The SCOTUS] held that (i) in regulating the speech of its employees, the state as employer has interests that differ significantly from those it possesses in regulating the speech of the citizenry in general; (ii) the courts must therefore balance the legitimate interest of employee free expression against the interests of the employer in promoting efficiency of public services; (iii) if the employees' expression interferes with the maintenance of efficient and regularly functioning services, the limitation on speech is not unconstitutional; and (iv) the Legislature is to be given some flexibility or latitude in ascertaining which positions are to be covered by any statutory restrictions. Therefore, insofar as government employees are concerned, the correct standard of review is an interest-balancing approach, a means-end scrutiny that examines the closeness of fit between the governmental interests and the prohibitions in question.[57] (Citations omitted)

The Court further observed that following *Letter Carriers* and *Broadrick*, the US First Circuit Court of Appeals in the subsequent case of *Magill v. Lynch*[58] concluded thusly:

[T]hat the view that political candidacy was a fundamental interest which could be infringed upon only if less restrictive alternatives were not available, was a position which was no longer viable, since the Supreme Court (finding that the government's interest in regulating both the conduct and speech of its employees differed significantly from its interest in regulating those of the citizenry in general) had given little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of Congress, and applying a "balancing" test to determine whether limits on political activity by public employees substantially served government interests which were "important" enough to outweigh the employees' First Amendment rights.[59] (Citation and emphasis omitted, and underscoring supplied)

To be sure, an argument may be made that *Quinto* and the US cases it relied upon were all premised on the legitimate and compelling interest of the State to direct the conduct of its employees in the name of efficient public service. Herein petitioners, who are non-incumbent public servants, evidently do not fall within the State's control or supervision. Notably, however, *Quinto* itself appeared to have acknowledged the general application of the principle laid down in *Letter Carriers* and *Broadrick* when it concluded that "American case law has in fact never recognized a fundamental right to express one's political views through candidacy, as to invoke a rigorous standard of review." [60] One of the relevant US cases *Quinto* cited, at this turn, was *Clements v. Fashing*[61] (*Clements*), where the SCOTUS concluded that candidacy is not a "fundamental right" that itself requires departure from traditional equal protection principles under which state-law classifications need only be drawn in such a manner as to bear some rational relationship to a legitimate state end. In so holding, *Clements* cited *Bullock v. Carter*, [62] where the only issue at hand was the exorbitant primary election fees. *Clements'* incisive discussion thus went on:

Far from recognizing candidacy as a "fundamental right," we have held that the existence of barriers to a candidate's access to the ballot "does not, of itself, compel close scrutiny." "In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters." In assessing challenges to state election laws that restrict access to the ballot, this Court has not formulated a "litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause." Decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions.

Our ballot access cases, however, do focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the "availability of political opportunity." This Court has departed from traditional equal protection analysis in recent years in two essentially separate, although similar, lines of ballot access cases.

One line of ballot access cases involves classifications based on wealth. In invalidating candidate filing-fee provisions, for example, we have departed from traditional equal protection analysis because such a "system falls with unequal weight on voters, as well as candidates, according to their economic status." "Whatever may be the political mood at any given time, our tradition has been one of hospitality toward all candidates without regard to their economic status." Economic status is not a measure of a prospective candidate's qualifications to hold elective office, and a filing fee alone is an inadequate test of whether a candidacy is serious or spurious. Clearly, the challenged provisions in the instant case involve neither filing fees nor restrictions that invidiously burden those of lower economic status. This line of cases, therefore, does not support a departure from the traditional equal protection principles.

The second line of ballot access cases involves classification schemes that impose burdens on new or small political parties or independent candidates. These cases involve requirements that an independent candidate or minor party demonstrate a certain level of support among the electorate before the minor party or candidate may obtain a place on the ballot. In these cases, the Court has emphasized that the States have important interests in protecting the integrity of their political processes from frivolous or fraudulent candidacies, in ensuring that their election processes are efficient, in avoiding voter confusion caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections. To this end, the Court has upheld reasonable level-of-support requirements and classifications that turn on the political party's success in prior elections. The Court has recognized, however, that such requirements may burden First Amendment interests in ensuring freedom of association, as these requirements classify on the basis of a candidate's association with particular political parties. Consequently, the State may not act to maintain the "status quo" by making it virtually impossible for any but the two major parties to achieve ballot positions for their candidates.

The provisions of the Texas Constitution challenged in this case do not contain any classification that imposes special burdens on minority political parties or independent candidates. The burdens placed on those candidates subject to § 19 and § 65 in no way depend upon political affiliation or political viewpoint.

It does not automatically follow, of course, that we must apply traditional equal protection principles in examining § 19 and § 65 merely because these restrictions on candidacy do not fall into the two patterns just described. But this fact does counsel against discarding traditional principles without first examining the nature of the interests that are affected and the extent of the burden these provisions place on candidacy. Not all ballot access restrictions require "heightened" equal protection scrutiny. The Court, for example, applied traditional equal protection principles to uphold a classification scheme that denied absentee ballots to inmates in jail awaiting trial. Thus, it is necessary to examine the provisions in question in terms of the extent of the burdens that they place on the candidacy of current holders of public office.[63] (Emphasis supplied, and citations omitted)

Verily, the foregoing shows that the right to run or be voted for public office is neither an explicit nor implicit fundamental right or liberty guaranteed by the Constitution. As such, using the rational basis test against the assailed provisions in this case, what the Court should only be mindful of, are whether (1) the provisions carry a legitimate government interest and (2) whether there is a reasonable connection between such governmental interest and the means employed to achieve it, i.e., making distinctions between different sets of candidates.[64]

There is no rational basis for the prohibition under the assailed provisions nor is it reasonably connected to the policy behind the party-list system.

Although the assailed provisions demand the application only of the rational basis test in determining their reasonableness, being that the right to run for public office is not constitutionally-guaranteed, I concur that the law and rules challenged do not pass this test.

A careful understanding of the case shows that petitioners' equal protection challenge is double-layered: First, petitioners assail the distinction made between party-list representatives and district representatives in that the prohibition under the assailed provisions only apply to the former and not to the latter. Second, they challenge the distinction made within the class of party-list nominees, specifically between nominees who lost in the previous elections and those who won or did not participate therein.

The first challenge – that the assailed provisions only apply to party--list representatives and not to district representatives – is already answered sufficiently by Section 5(1). They cannot apply to district representatives precisely because the Constitution, via Section 5(1), allows legislation of additional qualifications only as to party-list representatives. Pursuant to SJS, the Congress cannot add to the qualifications for national elective positions enumerated in the Constitution, including those for district representatives.

However, as to the second layer — distinguishing between party-list nominees who failed to win in the prior election and those who won or did not participate therein — there appears to be no rational basis and no connection between singling out such political losers and the policy behind the party-list system. Indeed, a closer look at the Congressional deliberations and a deeper appreciation of the policy behind the party-list system of representation as envisioned by the framers of the 1987 Constitution shows that the prohibition under Section 8 of RA 7941, and consequently its implementing rules under COMELEC Resolution No. 10717, lacks any rational basis and is inconsistent with the legitimate government interest behind the party-list system.

Section 2 of RA 7941 embodies the policy behind the party list system of representation, thus:

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 under-represented 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. (Emphasis supplied)

Hence, the intent behind the law is evident, i.e., to enhance the chances of Filipinos belonging to marginalized and underrepresented sectors, organizations, and parties and those who lack well-defined political constituencies to

compete for and win seats in the legislature.

In *Atong Paglaum, Inc. v. COMELEC*[65] (*Atong Paglaum*), the Court pronounced that the party-list system under the 1987 Constitution is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the HOR. In line with this intent, the Court adopted a broad construction of the law, ruling that the system embraces both sectoral and non-sectoral parties, that "marginalized and underrepresented" includes those who are such along economic as well as ideological lines, and that even major political parties may participate through their sectoral wings. In the end, *Atong Paglaum*, consistent with the policy of attaining the widest representation for the marginalized and underrepresented who cannot compete in the district elections, substantially expanded the guidelines laid down in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*[66] and *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*.[67] The Court ruled:

The 1987 Constitution provides the basis for the party-list system of representation. Simply put, the party-list system is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the [HOR]. x x x

x x x x

Indisputably, the framers of the 1987 Constitution intended the party-list system to include not only sectoral parties but also non-sectoral parties. The framers intended the sectoral parties to constitute a part, but not the entirety, of the party-list system. x x x

x x x x

The common denominator between sectoral and non-sectoral parties is that they cannot expect to win in legislative district elections but they can garner, in nationwide elections, at least the same number of votes that winning candidates can garner in legislative district elections. The party--list system will be the entry point to membership in the [HOR] for both these non-traditional parties that could not compete in legislative district elections.

x x x x

This interpretation will harmonize the 1987 Constitution and [RA] 7941 and will give rise to a multi-party system where those "marginalized and underrepresented," both in economic and ideological status, will have the opportunity to send their own members to the [HOR]. This interpretation will also make the party-list system honest and transparent, eliminating the need for relatively well-off party-list representatives to masquerade as "wallowing in poverty, destitution and infirmity," even as they attend sessions in Congress riding in SUVs.

x x x x

The 1987 Constitution and R.A. No. 7941 allow major political parties to participate in party-list elections so as to encourage them to work assiduously in extending their constituencies to the "marginalized and underrepresented" and to those who "lack well-defined political constituencies." The participation of major political parties in party-list elections must be geared towards the entry, as members of the [HOR], of the "marginalized and underrepresented" and those who "lack well--defined political constituencies," giving them a voice in law-making. Thus, to participate in party-list elections, a major political party that fields candidates in the legislative district elections must organize a sectoral wing, like a labor, peasant, fisherfolk, urban poor, professional, women or youth wing, that can register under the party-list system.

x x x x

We cannot, however, fault the COMELEC for following prevailing jurisprudence in disqualifying petitioners.

In following prevailing jurisprudence, the COMELEC could not have committed grave abuse of discretion. However, for the coming 13 May 2013 party-list elections, we must now impose and mandate the party-list system actually envisioned and authorized under the 1987 Constitution and [RA] 7941. In BANAT, this Court devised a new formula in the allocation of party-list seats, reversing the COMELEC's allocation which followed the then prevailing formula in Ang Bagong Bayani. In BANAT, however, the Court did not declare that the COMELEC committed grave abuse of discretion. Similarly, even as we acknowledge here that the COMELEC did not commit grave abuse of discretion, we declare that it would not be in accord with the 1987 Constitution and [RA] 7941 to apply the criteria in Ang Bagong Bayani and BANAT in determining who are qualified to participate in the coming 13 May 2013 party-list elections. For this purpose, we suspend our rule that a party may appeal to this Court from decisions or orders of the COMELEC only if the COMELEC committed grave abuse of discretion.[68] (Citations omitted, and emphasis and italics in the original)

Section 2 of RA No. 7941 and Atong Paglaum are clear as to the policy behind the party-list representation – according as much political opportunity to the ideologically and economically marginalized or underrepresented because they could not otherwise reasonably compete in the district elections. In this regard, excluding defeated candidates in the previous elections from the party-list system does not further this policy. On the contrary, historically, failure in the elections has been attributed to economic disadvantages and lack of strong political bases. It appears that these are precisely the influences that the party-list system seeks to diminish, so that those who are traditionally disadvantaged in politics for being marginalized and underrepresented can have a real chance at becoming a legislator.

I agree with the ponencia that a prohibition on candidates from becoming a party-list nominee in the same elections is more in keeping with the purported basis of Section 8 of RA 7941 of preventing the abuse of the party-list system by treating the same as a fallback for losing candidates.[69] Apart from the intent of both houses of Congress in passing the law,[70] this is consistent with Section 73 of the OEC which prohibits the filing of CoCs for more than one position in the same elections, thus:

Sec. 73. Certificate of candidacy. – No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificates of candidacy, the person who was filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. (Emphasis supplied)

Notably, Section 73 refers to a candidate who "files his certificate of candidacy for more than one office" who then "shall not be eligible for any of them." Given the language of Section 73, one can argue that it does not apply to a candidate who is likewise a party-list nominee. To recall, a party--list nominee does not file a CoC. Instead, under COMELEC Resolution No. 10717, the nominating sectoral party, organization or coalition is required to file a Certificate of Nomination which lists, among others, the names of its nominees, while the nominee is required to file a corresponding Certificate of Acceptance of Nomination.[71]

Moreover, the OEC was enacted on December 3, 1985 whereas the party-list system was introduced under the 1987 Constitution. In other words, the Congress, in passing the OEC, had not contemplated the party--list system

of representation.

Hence, there presently appears to be no express legal prohibition against candidates for an elective position from becoming, in the same elections, a nominee for a party, organization or coalition. This supports the theory that the intention of the legislature was, in fact, to pass a law embodying such prohibition instead of Section 8 as presently worded. The evil of using the party-list system as a "backdoor" for the rich and powerful is certainly greater in the case of a candidate who is simultaneously a party-list nominee than one who lost a bid in the prior elections and is trying his or her luck again, this time as a party-list nominee.

The party--list system is a significant innovation of the present Constitution in the composition of the members of the HOR. The system is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the HOR.[72] Significantly, the participation of any national, regional, and sectoral parties in party-list elections must be geared towards the entry, as member of the HOR, of the "marginalized and underrepresented" and those who "lack well-defined political constituencies," giving them a voice in law-making.[73]

Equally important, a party--list nominee must be a bona fide member of the party or organization which he or she seeks to represent. In the case of sectoral parties, to be a bona fide party-list nominee one must either belong to the sector represented, or have a track record of advocacy for such sector.[74]

Hence, given the nature and noble objectives of the party-list system, it is, indeed, imperative that the misuse of the system be seriously guarded against. Indeed, the party--list system has been criticized as having evolved into a backdoor for the rich and powerful to further entrench themselves in Congress.[75] Local officials affected by term limits are, in particular, criticized for using the party-list system to wield power and influence as they prepare to regain their position in the next election cycle.[76]

However, I fail to appreciate how the assailed provisions guard against these possible abuses. For instance, local officials who become party-list nominees in the meantime that the three-term limit prohibits them from running for their customary local positions are necessarily victors in the previous elections. Hence, they will not be prevented by the prohibition on political losers under the assailed provisions from exploiting the party--list system. The distinction created palpably fails to advance any legitimate governmental interest.

In sum, I agree that Congress is empowered by Section 5(1) to provide for disqualifications of party-list nominees. However, such legislation is subject to basic constitutional limitations, including the equal protection clause. In determining the reasonableness of a classification made by a law enacted pursuant to Section 5(1) such as the assailed provisions, the rational basis test applies because the right to seek public office is not a fundamental right. Applying this test in the present case, the assailed provisions fail to demonstrate any rational basis to support it. In fact, its discrimination against losing candidates of the immediately preceding election clearly offends the policy behind the party-list system of attaining the broadest possible representation for the marginalized, underrepresented and those without well-defined political constituencies. As such, the assailed provisions are unconstitutional for violating the equal protection clause under the 1987 Constitution.

In view of the foregoing, I vote to grant the Consolidated Petitions and to declare the assailed provisions unconstitutional.

[1] Sec. 8. Nomination of Party-List Representatives. Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5) from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned. Emphasis supplied.

[2] Also known as the "Party-List System Act," approved on March 3, 1995.

[3] Sec. 5. Contents and Form of the Certificate of Nomination. – The certificate of Nomination of a [political party], sectoral party organization or [coalition of political parties] shall contain the following:

x x x x

d. a certification that the nominees have all the qualifications and none of the disqualifications provided by law and that they are not candidates for any elective office or have lost in their bid for an elective office in the May 13, 2019 National and Local Elections[.]

x x x x

[4] Sec. 10. Nomination of Party-List Representatives. – A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the May 13, 2019 National and Local Elections. No change of name or alterations of the order of nominees shall be allowed after the same shall have been submitted to the Commission except in cases where the nominee dies, becomes incapacitated, or there is a valid withdrawal and substitution of nominees as provided in the succeeding sections, in which case, the name of the substitute nominee shall be placed last in the list. Emphasis supplied.

[5] Rules and Regulations Governing: 1) Political Conventions; 2) Submission of Nominees of Groups or Organizations Participating Under the Party-List System of Representation; and 3) Filing of Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in Connection with the May 9, 2022 National and Local Elections, promulgated on August 18, 2021.

[6] Article VI. The Legislative Department

x x x x

Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

[7] 591 Phil. 393 (2008).

[8] Ponencia, pp. 22-23.

[9] See *id.* at 5-8.

[10] II Record, CONSTITUTIONAL COMMISSION, p. 572 (1 August 1986).

[11] 1987 CONSTITUTION, Article XVIII, Sec. 7.

[12] Veterans Federation Party v. COMELEC, 396 Phil. 419 (2000).

[13] Any legislation must be in line with the intent and purpose behind the party-list system:

The party-list system was an innovation introduced by the drafters of the Constitution to diversify representation in the [HOR]. It was meant to "open the system," in recognition of the real need to provide an effective platform to those who belong to marginalized sectors of society, such as labor, peasant, urban poor, indigenous cultural communities, women, and youth, and also to provide an avenue to those who had been unable to gain seats in the legislature because of the dominance of the traditional and well-established political parties. x x x

x x x x

x x x RA 7941 states that 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 [HOR] by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible. (Separate Opinion of Associate Justice Alfredo Benjamin S. Caguioa in ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. v. COMELEC, G.R. No. 246816, September 15, 2020.)

[14] Ponencia, p. 12.

[15] Id. at 12-13.

[16] Tiu v. CA, 361 Phil. 229, 239 (1999).

[17] Zomer Development Company, Inc. v. Special Twentieth Division of the CA, Cebu City, G.R. No. 194461, January 7, 2020, 928 SCRA 110, 134.

[18] 101 Phil. 1155 (1957).

[19] Id. at 1164.

[20] People v. Cayat, 68 Phil. 12, 18 (1939).

[21] Samahan ng mga Progresibong Kabataan v. Quezon City, 815 Phil. 1067, 1113-1114 (2017); Serrano v. Gallant Maritime Services, Inc., 601 Phil. 245, 282 (2009).

[22] Id. at 1113; id. at 282.

[23] Id. at 1113-1114.

[24] Id. at 1114.

[25] Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 487 Phil. 531, 599 (2004).

[26] Id.

[27] Id. at 600.

[28] Ponencia, p. 15.

[29] Id., citing Quinto v. COMELEC, 627 Phil. 193, 253 (2010).

[30] See Separate Opinion of Retired Associate Justice Francis H. Jardeleza in Versoza v. People, G.R. No. 184535, September 3, 2019, citing Easterbrook, "Implicit and Explicit Rights of Association," Vol. 10 Harvard Journal of Law and Public Policy (1987), pp. 91-92.

[31] See Winkler, Adam, "Fundamentally Wrong About Fundamental Rights" (2006). Constitutional Commentary 36. <<https://scholarship.law.umn.edu/concomm/36>>, last accessed on January 12, 2023.

[32] See Separate Opinion of Retired Associate Justice Francis H. Jardeleza in *Versoza v. People*, supra note 30.

[33] 478 U.S. 186 (1986).

[34] Supra note 30.

[35] 46 Phil. 440 (1924).

[36] 130 Phil. 415 (1968).

[37] 296 Phil. 694 (1993).

[38] 732 Phil. 1 (2014).

[39] 781 Phil. 610 (2016).

[40] 831 Phil. 33 (2018).

[41] *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), citing *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992). Emphasis supplied.

[42] Id.

[43] Id.

[44] Id.

[45] Id. at 720-721.

[46] 754 Phil. 578, 586 (2015).

[47] 470 Phil. 711 (2004).

[48] Id. at 715-719.

[49] 696 Phil. 700 (2012).

[50] Id. at 731-732.

[51] Supra note 29.

[52] Id. at 253-254.

[53] 413 U.S. 548, 93 S. Ct. 2880 (1973).

[54] 413 U.S. 601, 93 S. Ct. 2908 (1973).

[55] Supra note 53, at 556-557.

[56] Supra note 54, at 616-617.

[57] Supra note 29, at 237-238.

[58] 560 F.2d 22 (1st Cir. 1977).

[59] Supra note 29, at 247.

[60] *Id.* at 253. Citations and emphasis omitted.

[61] 457 U.S. 957 (1982).

[62] 405 U.S. 134 (1972).

[63] *Supra* note 61, at 963-966.

[64] *Zomer Development Company, Inc. v. Special Twentieth Division of the CA, Cebu City*, *supra* note 17, at 137.

[65] 707 Phil. 454 (2013).

[66] 412 Phil. 308 (2001).

[67] 604 Phil. 131 (2009).

[68] *Supra* note 65, at 528, 534-535, 536, 544, 545-546, and 549-550.

[69] *Ponencia*, pp. 20-22.

[70] *Id.* at 22-23.

[71] See COMELEC Resolution No. 10717, Sections 4 to 6.

[72] *Atong Paglaum, Inc. v. COMELEC*, *supra* note 65, at 528.

[73] *Id.*

[74] *Id.* at 546. Emphasis omitted.

[75] *Bastardizing the party-list system*, Atty. Dennis Gorecho, *Business Mirror*, April 7, 2022; <<https://businessmirror.com.ph/2022/04/07/bastardizing-the-party-list-system/>>, last accessed on August 7, 2022.

[76] *Id.*

DISSENT

LAZARO-JAVIER, J.:

I vote to sustain the constitutionality of the pertinent portion of Section 8, Republic Act No. 7941 (1995), The Party-List System Act, viz.:

SECTION 8. Nomination of Party-List Representatives. — Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5) from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. xxx

One. Generally, controversies involving equal protection right center on two primary questions.

The first is how far, or in relation to what rights, does the command of equality intend to apply? We ask, equal as to what, or what rights are we all supposed to be equal at? Does it entail any or all of civil, political, social, or

economic equality? For instance, if my neighbor earns more than I do because the government prescribed wage rate allows this individual to earn more than I would ever in my lifetime, would the equal protection right compel economic equality between us?

The second is what does it mean to treat persons equally? In other words, what is equal treatment? In the same illustration, supposing I am entitled to be economically equal with my neighbor, that is, we ought to have economic equality, how would this equal treatment be achieved? Must the neighbor's pay be reduced, or should mine be increased, or do I get other perks to compensate for the inequality?

In our legal system, the main test for deciding these and other equal protection challenges is:

The equal protection clause means that no person or class of persons shall be deprived of the same protection of laws enjoyed by other persons or other classes in the same place in like circumstances. Thus, the guarantee of the equal protection of laws is not violated if there is reasonable classification. It must be shown, therefore, that the classification (1) rests on substantial distinctions; (2) is germane to the purpose of the law; (3) is not limited to existing conditions only; and (4) applies equally to all members of the same class.[1]

Under this test, the scope of equal protection is as broad as any governmental action. The command to treat persons equally extends to all actions by the government. Thus, as expressed in the test, our concept of the equal protection right is that it is not per se an anti-discrimination rule though it encompasses anti-discrimination as well. Thus, in *Sameer Overseas Placement Agency Inc. v. Cabiles*,^[2] the Court said:

Equal protection of the law is a guarantee that persons under like circumstances and falling within the same class are treated alike, in terms of "privileges conferred and liabilities enforced." It is a guarantee against "undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality."

By discrimination, I mean treating someone differently based on specific characteristics protected by law, where this treatment has a negative effect on that person. This has been generally referred to as suspect classifications.

Examples of these characteristics include ancestry (including color and perceived race); nationality or national origin; religion or creed; ethnic background or origin; age; sex (including sex-determined characteristics such as pregnancy); gender identity; sexual orientation; marital or family status; source and level of income; political belief, physical or mental disability; social or historical disadvantage; and other characteristics subjected to prejudice or group stereotypes, such as criminal record.

Prejudicial treatment, when based on those specific characteristics, is considered discrimination, as is failing to reasonably accommodate the special needs of a person or group. Often, individuals or classes having these specific characteristics are accorded special protection by our Constitution.^[3] Discrimination is prohibited by law because it offends the dignity of a person.

Under our main test, as indicated by its use of the phrase reasonable classification, the standard analysis of equal protection challenges has followed the rational basis test. This is coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law. The exception is where there is a showing of a clear and unequivocal breach of the Constitution.^[4]

But *Samahan ng mga Progresibong Kabataan v. Quezon City*,^[5] *Serrano v. Gallant Maritime Services Inc.*,^[6] *White Light Corporation v. City of Manila*,^[7] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,^[8] among others, carved out an exception to this general rule, such that prejudice to persons accorded special protection by the Constitution requires stricter judicial scrutiny than mere rationality. The Court referred to it as a strict scrutiny of the classifications to determine if they do or do not rest on any real or substantial

distinctions that would justify different treatments. This standard and its overarching analytical framework were developed in American jurisprudence in accordance with its historical and state interests in mind.

The above strict scrutiny standard and its overarching analysis were not followed in some of the subsequent cases.[9] Sameer Overseas Placement Agency Inc.[10] appears to have abandoned this line of analysis in Serrano when the former, despite citing the latter, held:

We do not need strict scrutiny to conclude that these classifications do not rest on any real or substantial distinctions that would justify different treatments in terms of the computation of money claims resulting from illegal termination.

Disini v. Secretary of Justice[11] did not also see the need to apply strict scrutiny since no suspect classifications were involved, and more tellingly, universally condemnable act or conduct was targeted and therefore should be immediately classified and quarantined for being such.

I perceive some well-meaning reluctance to accept the strict scrutiny standard and its overarching analysis because of its alien overtures that may not befit our own values and circumstances. Further, it appears to be intuitive to accept the rational basis test as our sole main test for equal protection. The reason is that its premise of invalidating classifications that clearly and unequivocally breach the Constitution is a simple reiteration of the fundamental and straightforward legal doctrine that the Constitution is the supreme law and anything that violates it is void. This choice of the rational basis test does away with the confusing nuanced and tiered tests in American jurisprudence on equal protection.

Under the rational basis test, we determine whether the classification is reasonable. To do this, we must establish:

- Is there a legitimate government interest behind the classification?
- Is the classification rationally related to this legitimate government interest?[12]

If the answer is yes to both questions, we must then inform the reasons for the affirmative answers with responses to: (i) whether there are substantial distinctions between or among the classes; (ii) whether the classification is germane to the purpose of the law, not limited to existing conditions, and applies equally to all members of the same class; and (iii) whether the classification clearly and unequivocally breaches the Constitution. These questions constitute the rational basis test. The affirmative answers to these questions in turn constitute the hallmarks of a reasonable classification.

In this test, there is generally little second-guessing as to whether the law works. The analysis of alternatives is irrelevant. The starting point is that the law that imposes the classification is presumptively constitutional. The burden is on the complaining party to show that the only purpose of the legislation was entirely arbitrary, irrational, or invidiously discriminatory.

Here, the underlying classification in the assailed portion of Section 8, Republic Act No. 7941 has nothing to do with discriminatory or suspect classifications. No persons especially accorded protection by the Constitution are involved. The classification does not distinguish between historically or socially disadvantaged individuals or groups or others whose immutable characteristics are subjected to prejudice or group stereotypes, on one hand, and normal persons, on the other. Hence, the appropriate standard of review for Section 8 is the rational basis test.

Two. It is obvious from the test of equal protection that comparison plays a role throughout the equal protection guarantee. Equality is a comparative concept, the condition of which may only be attained or discerned by comparison with the condition of others. This basic right requires an inherently comparative analysis. Thus, the threshold is to determine that one group is unequally treated as against another. When we say unequal treatment,

however, we mean substantive equality as opposed to formal equality. There is no greater inequality than the equal treatment of unequals. Ironically, it is unfair and bad law to treat everyone equally because not everyone is equal.

Critical in every equal protection analysis is the identification of the proper comparator groups. A court must identify differential treatment as compared to one or more other persons or groups. These are the ones against whom the classified group in the assailed law is measured against. Locating the appropriate comparator is necessary in identifying differential treatment. To establish that indeed a classification has been made by the assailed law, we ask:

- Does the challenged provision, on its face or in its impact (i.e., since the equal protection right may be infringed not only by the legislation itself, but by the actions of a delegated decision-maker applying it), create a distinction? and,
- If so, does the distinction impose burdens or deny a benefit?

This threshold distinction or classification stage of the analysis should immediately bar claims that are not intended to be prohibited by the equal protection right because no classifications have actually been made.

Caution must be taken in this stage of analysis – this means that the analysis must examine every contextual impact of intersecting grounds of differential treatment. In this stage, we must account for adverse consequences of the assailed law. This is done to determine whether indeed the assailed law establishes a classification and whether this classification truly imposes a burden or denies a benefit.

From the threshold test of distinctions and classifications and moving forward to the main test of equal protection, to arrive at whether the impugned law infringes the equal protection guarantee, it must be viewed as a whole. What is required is an approach that takes account of the full context of the claimant group's situation. That context will include the legislative, political and social contexts as well as the actual impact of the law on that situation.

More, we must also examine the object of the assailed law in the context of its broader legislative scheme, taking into account the universe of potential beneficiaries vis-à-vis the universe of potentially encumbered or disadvantaged targets. A law must necessarily draw distinctions to achieve certain policy goals while properly allocating resources or opportunities.

What must be asked is whether the purpose of the assailed law corresponds to the needs of the claimant groups when considered in the context of the whole scheme, or does it force them to carry a burden that others do not? The analysis is contextual, not formalistic, grounded in the actual situation of the group and the potential of the impugned law to worsen their situation.

Three. The assailed provision is a part of Section 8 and specifically states: "Nomination of Party-List Representatives.... The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election...."

Applying the test of equal protection to this assailed provision, I note the following comparator groups:

1. Candidates of any elective office running in the current elections vis-à-vis nominees of party-list organizations running in the current elections.
2. Political parties of candidates and candidates themselves of any elective office running in the current elections vis-à-vis registered party-list organization or coalition running in the current elections.

3. Winning candidates of any elective post in the immediately preceding elections vis-à-vis losing candidates of any elective post in the immediately preceding elections.

Threshold Test

First, does the challenged provision, on its face or in its impact (i.e., since the equal protection right may be infringed not only by the legislation itself, but by the actions of a delegated decision-maker applying it), create a distinction?

The answer is yes.

Candidates of any elective office running in the current elections are treated differently from nominees of party-list organizations running in the current elections. Candidates do not lose their status as candidates, or they are not disqualified as candidates in the current elections, though they are included as nominees of a party-list organization or lost in the immediately preceding elections. Nominees lose their status as nominees if they are candidates in the current elections or were candidates who lost in the immediately preceding elections.

Political parties of candidates and candidates themselves of any elective office running in the current elections are treated differently from registered party-list organizations or coalitions running in the current elections. Political parties are not burdened by the rules under the assailed portion of Section 8, while registered party-list organizations or coalitions are. The same differential treatment exists between the candidates themselves of any other elective office and every registered party-list organization or coalition. The assailed portion of Section 8 applies only to the latter.

Winning candidates of any elective post in the immediately preceding elections are treated differently from losing candidates of any elective post in the immediately preceding elections, in that the former qualify as nominees of party-list organizations running in the current elections while the latter do not qualify as such nominees.

Second, does the distinction impose burdens or deny a benefit?

The answer is yes. There are burdens imposed upon nominees of party-list organizations running in the current elections, registered party-list organizations or coalitions running in the current elections, and losing candidates of any elective post in the immediately preceding elections.

Rational Basis Test

Is there a legitimate government interest behind the classification?

The answer is yes. As the ponencia admits, the legitimate government interest is to protect the integrity of the party-list system of electing representatives by disallowing or discouraging the traditional elective officials from crowding, monopolizing or abusing the party-list system of representation to perpetuate themselves in power. It may also be said that the legitimate government interest is to prevent traditional politicians from abusing the party-list system as a backdoor to entrench themselves in power, thereby defeating the purpose of the party-list system as a means to give legislative voice to the marginalized and underrepresented sectors of our country.

Is the classification rationally related to this legitimate government interest?

The answer is also yes. By placing an embargo upon the qualifications of nominees of party-list organizations that are not imposed upon political parties of candidates of other elective offices and candidates themselves of other elective offices, and by treating losing candidates in the immediately preceding elections from winning candidates of the same elections, the assailed provision is able to limit, discourage or disallow the abuse of the party-list system as a backdoor for these traditional politicians. The objective is also to promote and strengthen the

capacities of organizations who have no machinery to match those candidates in other elective posts, to have voices in and bring their platforms to Congress. The classifications may be under-inclusive but they are nonetheless reasonably related to the government interest articulated above.

In this regard, there are substantial distinctions between political parties of candidates of any other elective offices and candidates themselves of any other elective offices running in the current elections and registered party-list organization or coalition and nominees of party--list organizations running in the current elections, and between winning candidates of any elective post in the immediately preceding elections and losing candidates of any elective post in the immediately preceding elections. These substantial distinctions make for a reasonable relation between these classifications and the legitimate government interest.

Candidates are the ones being voted into office. Nominees are not candidates – they are not voted into office. So are the political parties of candidates in other elective offices. But in a party-list system, the candidates are the party-list organizations. The nominees are intended to be the mere agents of the candidate party-list organization. Even in victory, while candidates hold a piece of the sovereignty by their election to office, neither the political party nor the nominees wield this piece of the sovereignty since for the nominees it is their principal, the registered party--list organization or coalition, that does carry this piece of the sovereignty.

Losing candidates in the immediately preceding elections are different from winning candidates in the immediately preceding elections in that they have the slightest probability of winning in the traditional elective posts. Hence, the attraction and temptation to test the party-list system would be stronger among these losing candidates than it would be for winning candidates. The idea is to avoid the party-list system from becoming a dumping ground of losers in the traditional elective posts and usurping the party-list system to regain power when this system is supposed to have the marginalized and underrepresented in mind as beneficiaries.

The classifications are germane to the purpose of the assailed portion of Section 8. They are not alien to it. They are reasonably tailored to achieve the legitimate government interest mentioned above. The classifications too are not limited to existing conditions. They are perpetually imposed so long as Section 8 is in effect. They also apply equally to all members of the same class – each registered party-list organization or coalition, all party-list nominees and all losing candidates in the immediately preceding elections.

Contextual impact of intersecting grounds of differential treatment and adverse consequences

Nominees of party-list organizations running in the current elections and losing candidates for any elective post in the immediately preceding elections have no social or historical disadvantage or other characteristics subjected to prejudice or group stereotypes. By imposing an added burden of additional qualifications or grounds of disqualification upon them, not otherwise imposed on candidates in elective offices running in the current elections and winning candidates in the immediately preceding elections, we are not perpetuating any social or historical disadvantage; neither are we subjecting them to prejudice or group stereotypes – simply because there is no contextual impact of intersecting grounds of differential treatment, and adverse consequences upon them. Nominees and losing candidates were never before prejudiced or disadvantaged; the assailed portion of Section 8 does not make them now.

Registered party-list organizations or coalitions may have had experienced social or historical disadvantage or other characteristics subjected to prejudice or group stereotypes. They represent, if not themselves are, marginalized and underrepresented causes and constituencies. It was precisely for this reason that the party-list

system was put into place.

But the assailed portion of Section 8 does not aggravate or perpetuate these social or historical disadvantages, prejudice or stereotypes. On the contrary, the purpose of the assailed portion of Section 8 corresponds exactly to the needs of the claimant groups (i.e., registered party-list organizations or coalitions, nominees and losing candidates) when considered in the context of the whole scheme. While this provision does force them to carry a burden that others do not, the burden is necessary and reasonably related to protect and promote the integrity of the party-list system and the party-list organizations themselves that are essentially the intended beneficiaries of Republic Act No. 7941.

No clear and unequivocal breach of the Constitution

The claimant groups in the assailed portion of Section 8 are not especially accorded protection by the Constitution. This classification is not even mentioned in the Constitution. They are purely statutory constructs pursuant to Section 5 (1) and (2)[13] of the Constitution. The imposition of burdens upon them not shared with others is in fact authorized by the aforementioned constitutional provisions.

Conclusion

To conclude, the assailed portion of Section 8 has the hallmarks of a reasonable classification.

Four. In accordance with the distinction between candidates and party-list nominees, petitioners have no standing to commence this judicial review. The nominees do not have the right to nominate themselves. The right belongs to the party-list organizations. Section 5 (1) of the Constitution speaks of the "party-list system of registered national, regional, and sectoral parties or organizations." Section 8 of Republic Act No. 7941 identifies the right-holder to nominate as each of the registered party, organization or coalition:

Nomination of Party-List Representatives. — Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5) from which party-list representatives shall be chosen in case it obtains the required number of votes. A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list.

The nominees are mere persons. They are the objects of the decision-making done by each registered party, organization or coalition. They have no rights except the right to consent to the nomination. But the nomination right itself does not belong to the nominee. The nominees hold no right to be nominated.

Here, the equal protection challenge to the assailed portion of Section 8 properly belongs to registered party-list organizations or coalitions since it is their right to nominate that is alleged to have been infringed by the classification that is not imposed upon the other comparator groups. Petitioners have no standing to bring this suit since they have not been injured by the assailed provision or more precisely the reasonable classification made therein. Hence, I cannot agree to grant relief to petitioners.

Five. We cannot allow the Court to be Congress' carte-blanc supervisor when it comes to what are reasonable classifications. It is in the nature of things that all laws classify, and all laws make distinctions, leading to a virtually unlimited number of potential equal protection challenges. Close judicial review of all classifications to ensure equal protection of the laws is a practical impossibility. Although the clause protects all persons, the Court, as a practical matter, cannot give close scrutiny to all classifications that governmental action may create among

persons.

Thus, so long as the classification has a rational basis in relation to a legitimate government objective, and the complainant is not able to show that the only purpose of the legislation was entirely arbitrary, irrational, or invidiously discriminatory, the Court cannot second-guess Congress as to what the proper allocation of resources, opportunities, burdens and obligations and the proper classification of the universes of beneficiaries and burdened targets, should be. This rule is mandated by the doctrine of separation of powers. Congress enacts policies into binding legal orders and policies necessarily imply making choices. The Court has to respect this role of Congress, even if the allocation and classification are on hindsight believed by us to be imperfect or under-inclusive.

ALL TOLD, I vote to DENY the Petitions for Certiorari and Prohibition and confirm the constitutionality of the assailed portion of Section 8 of Republic Act No. 7941 and Sections 5(d) and 10 of COMELEC Resolution No. 10717.

[1] Securities and Exchange Commission v. Commission on Audit, G.R. No. 252198, April 27, 2021 [Per J. Lazaro-Javier, En Banc].

[2] 740 Phil. 403, 434 (2014) [Per J. Leonen, En Banc].

[3] See e.g., Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 487 Phil. 531 (2004) [Per J. Puno, En Banc]; Serrano v. Gallant Maritime Services Inc., 601 Phil. 245 (2009) [Per J. Austia-Martinez, En Banc].

[4] Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, *supra*.

[5] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

[6] 601 Phil. 245 (2009) [Per J. Austia-Martinez, En Banc].

[7] 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

[8] *Supra* note 4.

[9] See e.g., Disini v. Secretary of Justice, 727 Phil. 28 (2014) [Per J. Abad, En Banc]; Sameer Overseas Placement Agency Inc. v. Cabiles, *supra*.

[10] *Supra* note 2, at 437.

[11] 727 Phil. 28 (2014).

[12] Lagman v. Ochoa, G.R. No. 197422, November 3, 2020 [Per J. Leonen, En Banc].

[13] 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.

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