

EN BANC

Agenda of April 2, 2013

Item No.

G.R. No. 203766 – ATONG PAGLAUM, INC., represented by its President, Mr. ALAN IGOT, petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. Nos. 203818-19 – AKO BICOL POLITICAL PARTY ("AKB"), petitioner, versus THE HONORABLE COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 203922 – ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES (APEC), represented by its President, CONGRESSMAN PONCIANO D. PAYUYO, petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 203936 – AKSYON MAGSASAKA-PARTIDO TINIG NG MASA, represented by MICHAEL ABAS KIDA, petitioner, versus COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 203958 – KAPATIRAN NG MGA NAKAKULONG NA WALANG SALA, INC. (KAKUSA), petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 203960 – 1st CONSUMER ALLIANCE FOR RURAL ENERGY, INC. (1-CARE), petitioner, versus COMMISSION ON ELECTIONS (COMELEC) EN BANC, respondent.

G.R. No. 203976 – ALLIANCE FOR RURAL AND AGRARIAN RECONSTRUCTION, INC. (ARARO), petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 203981 – ASSOCIATION FOR RIGHTEOUSNESS ADVOCACY ON LEADERSHIP (ARAL) PARTY-LIST, represented herein by MS. LOURDES L. AGUSTIN, the party's Secretary General, petitioner, versus COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 204002 – ALLIANCE FOR RURAL CONCERNS, petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204094 – ALLIANCE FOR NATIONALISM AND DEMOCRACY (ANAD), petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204100 – 1-BRO PHILIPPINE GUARDIANS BROTHERHOOD, INC. (1BRO-PGBI) formerly PGBI, petitioner, versus COMMISSION ON ELECTIONS, (EN BANC), respondent.

G.R. No. 204122 – 1 GUARDIANS NATIONALIST PHILIPPINES, INC. (1GANAP/GUARDIANS), petitioner, versus COMMISSION ON ELECTIONS EN BANC composed of SIXTO S. BRILLANTES, JR., Chairman, RENE V. SARMIENTO, Commissioner, LUCENITO N. TAGLE, Commissioner, ARMANDO C. VELASCO, Commissioner, ELIAS R. YUSOPH, Commissioner, and CHRISTIAN ROBERT S. LIM, Commissioner, respondent.

G.R. No. 204125 – AGAPAY NG INDIGENOUS PEOPLES RIGHTS ALLIANCE, INC. (A-IPRA), represented by its Secretary General, RONALD D. MACARAIG, petitioner, versus THE COMMISSION ON ELECTIONS EN BANC, respondent.

G.R. No. 204126 – KAAGAPAY NG NAGKAKAISANG AGILANG PILIPINONG MAGSASAKA (KAP), formerly known as AKO AGILA NG NAGKAKAISANG MAGSASAKA (AKO AGILA), represented by its Secretary General, LEO R. SAN BUENAVENTURA, petitioner, versus COMMISSION ON ELECTIONS EN BANC, respondent.

G.R. No. 204139 – ALAB NG MAMAMAHAYAG (ALAM), represented by ATTY. BERTENI CATALUÑA CAUSING, petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204141 – BANTAY PARTY LIST, represented by MARIA EVANGELINA F. PALPARAN, President, petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204158 – ABROAD PARTY-LIST, petitioner, versus COMMISSION ON ELECTIONS, CHAIRMAN SIXTO S. BRILLANTES, JR., COMMISSIONERS RENE V. SARMIENTO, ARMANDO C. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM, MARIA GRACIA CIELO M. PADACA, LUCENITO TAGLE and ALL PERSONS ACTING ON THEIR BEHALF, respondents.

G.R. No. 204174 – AANGAT TAYO PARTY-LIST PARTY, represented by its President, SIMEON T. SILVA, JR., petitioner, versus THE HONORABLE COMMISSION ON ELECTIONS EN BANC (COMELEC EN BANC), respondent.

G.R. No. 204216 – COCOFED-PHILIPPINE COCONUT PRODUCERS FEDERATION, INC., petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204220 – ABANG LINGKOD PARTY-LIST, petitioner, versus COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 204236 – FIRM 24-K ASSOCIATION, INC., petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204238 – ALLIANCE OF BICOLNON PARTY (ABP), petitioner, versus THE COMMISSION ON ELECTIONS EN BANC, respondent.

G.R. No. 204239 – GREEN FORCE FOR THE ENVIRONMENT SONS AND DAUGHTERS OF MOTHER EARTH (GREENFORCE), petitioner, versus COMMISSION ON ELECTIONS (COMELEC), respondent.

G.R. No. 204240 – AGRI-AGRA NA REPORMA PARA SA MAGSASAKA NG PILIPINAS MOVEMENT (AGRI), represented by its Secretary General MICHAEL RYAN A. ENRIQUEZ, petitioner, versus THE COMMISSION ON ELECTIONS EN BANC, respondent.

G.R. No. 204263 – A BLESSED PARTY LIST (A.K.A. BLESSED FEDERATION OF FARMERS AND FIRSHERMEN INTERNATIONAL, INC.), petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204318 – UNITED MOVEMENT AGAINST DRUG FOUNDATION (UNIMAD) PARTY-LIST, petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204321 – ANG AGRIKULTURA NATIN ISULONG (AANI), represented by its Secretary General, JOSE C. POLICARPIO, JR., petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204323 – BAYANI PARTYLIST as represented by HOMER BUENO, FITRYLIN DALHANI, ISRAEL DE CASTRO, DANTE NAVARRO, and GUILING MAMONDIONG, petitioner, versus COMMISSION ON ELECTIONS, COMMISSIONER SIXTO BRILLANTES, JR., COMMISSIONER RENE V. SARMIENTO, COMMISSIONER LUCENITO N. TAGLE, COMMISSIONER ARMANDO C. VELASCO, COMMISSIONER ELIAS R. YUSOPH, COMMISSIONER CHRISTIAN ROBERT S. LIM, and COMMISSIONER MARIA GRACE CIELO PADACA, respondents.

G.R. No. 204341 – ACTION LEAGUE OF INDIGENOUS MASSES (ALIM) PARTY-LIST, represented herein by its President, FATANI S. ABDUL MALIK, petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204356 – BUTIL FARMERS PARTY, petitioner, versus THE COMMISSION ON ELECTIONS, respondent.

G.R. No. 204358 – ALLIANCE OF ADVOCATES IN MINING ADVANCEMENT FOR NATIONAL PROGRESS (AAMA), petitioner, versus COMMISSION ON ELECTIONS EN BANC, respondent.

G.R. No. 204359 – SOCIAL MOVEMENT FOR ACTIVE REFORM AND TRANSPARENCY (SMART), represented by its Chairman, CARLITO B. CUBELO, petitioner, versus THE COMMISSION ON ELECTIONS EN BANC, respondent.

G.R. No. 204364 – ADHIKAIN AT KILUSAN NG ORDINARYONG-TAO PARA SA LUPA, PABAHAY, HANAPBUHAY, AT KAUNLARAN (AKO BAHAY), petitioner, versus THE HONORABLE COMMISSION ON ELECTIONS (EN BANC), SIXTO S. BRILLANTES, JR., RENE V. SARMIENTO, LUCENITO N. TAGLE, ARMANDO C. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM and MA. GRACIA CIELO M. PADACA, in their capacities as Commissioners thereof, respondents.

G.R. No. 204367 – AKBAY KALUSUGAN (AKIN), INC., petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204370 – AKO AN BISAYA, otherwise known as “AAB,” represented by its Secretary General, RODOLFO T. TUAZON, petitioner, versus THE COMMISSION ON ELECTIONS, respondent.

G.R. No. 204374 – BINHI - PARTIDO NG MGA MAGSASAKA PARA SA MGA MAGSASAKA, petitioner, versus COMMISSION ON ELECTIONS (COMELEC) EN BANC, respondent.

G.R. No. 204379 – ALAGAD NG SINING (ASIN), represented by its President, FAYE MAYBELLE LORENZ, petitioner, versus THE COMMISSION ON ELECTIONS, respondent.

G.R. No. 204394 – GUARDJAN (ASSOCIATION OF GUARD, UTILITY HELPER, AIDER, RIDER, DRIVER/DOMESTIC HELPER, JANITOR, AGENT, NANNY OF THE PHILIPPINES, INC., DOING BUSINESS UNDER THE NAME AND STYLE OF GUARDJAN), petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204402 – KALIKASAN PARTY-LIST, represented by its President CLEMENTE G. BAUTISTA, JR., and Secretary General FRANCES Q. QUIMPO, petitioner, versus HON. COMMISSION ON ELECTIONS EN BANC, respondent.

G.R. No. 204408 – PILIPINO ASSOCIATION FOR COUNTRY - URBAN POOR YOUTH ADVANCEMENT AND WELFARE (PACYAW), petitioner, versus THE COMMISSION ON ELECTIONS, respondent.

G.R. No. 204410 – 1-UNITED TRANSPORT KOALISYON (1-UTAK), petitioner, versus COMMISSION ON ELECTIONS (COMELEC), respondent.

G.R. No. 204421 – COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC., SENIOR CITIZEN PARTY-LIST, represented herein by its 1st NOMINEE & CHAIRMAN, FRANCISCO G. DATOL, JR., petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204425 – COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC., petitioner, versus THE HONORABLE COMMISSION ON ELECTIONS (AND ANY OF ITS OFFICERS AND AGENTS, ACTING FOR AND IN ITS BEHALF, INCLUDING THE CHAIR AND MEMBERS OF THE COMMISSION), respondents.

G.R. No. 204426 – ASSOCIATION OF LOCAL ATHLETIC ENTREPRENEURS AND HOBBYISTS, INC. (ALA-EH), petitioner, versus COMMISSION ON ELECTIONS EN BANC, HONORABLE SIXTO S. BRILLANTES, JR., RENE V. SARMIENTO, LUCENITO N. TAGLE, ARMANDO C. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM, and MA. GRACIA CIELO M. PADACA, in their capacities as COMELEC Chairman and Commissioners, respondents.

G.R. No. 204428 – ANG GALING PINOY (AG), represented by its Secretary General BERNARDO R. CORELLA, JR., petitioner, versus THE COMMISSION ON ELECTIONS, respondent.

G.R. No. 204435 – 1 ALLIANCE ADVOCATING AUTONOMY PARTY (1AAAP) PARTY-LIST, petitioner, versus COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 204436 – ABYAN ILONGGO PARTY, otherwise known as “AI,” represented by its Party President, ROLEX T. SUPlico, petitioner v. COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 204455 – MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION, INC., petitioner, versus COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 204484 – PARTIDO NG BAYAN ANG BIDA (PBB), also known as “PBB,” as herein represented by its Secretary General, MR. ROGER M. FEDERAZO, petitioner, versus COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 204485 – ALLIANCE OF ORGANIZATIONS, NETWORKS AND ASSOCIATIONS OF THE PHILIPPINES, INC. (ALONA),

petitioner, versus COMMISSION ON ELECTIONS (EN BANC), respondent.

G.R. No. 204486 – 1st KABALIKAT NG BAYAN GINHAWANG SANGKATAUHAN (1st KABAGIS), petitioner, versus COMMISSION ON ELECTIONS, respondent.

G.R. No. 204490 – PILIPINAS PARA SA PINOY (PPP), petitioner, versus THE COMMISSION ON ELECTIONS (EN BANC), respondent.

Promulgated:

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SEPARATE CONCURRING OPINION

BRION, J.:

I submit this SEPARATE OPINION to reflect my views on the various questions submitted to the Court through consolidated petitions before us.

For ease of presentation and understanding, this Separate Opinion is laid out under the following structure:

- I. The Case and the Issues**

- II. Summary of Positions: Substantive Aspect of the Petitions**
 - A.** On reliance on *Ang Bagong Bayani* and its Guidelines.
 - 1. Points of Disagreement with *Ang Bagong Bayani*
 - 2. Effects on the Components of the Party-list System

 - B.** Nominees
 - C.** On the observation of the Chief Justice
 - D.** Grave abuse of discretion and Conclusion

- III. Preliminary Matters**
 - A.** The suspension of Rule 64; the existence of jurisdictional error that warrants reviewing COMELEC’s action
 - B.** COMELEC’s power to register and to cancel registration of a party-list group is an exercise of its administrative powers

- IV. Discussion: Merits of the Consolidated Petitions**
 - A.** The Constitutional Provisions on the Party-list System

- a. The Constitutional Text.
 - b. Constitutional text summarized
 - c. Purpose Behind the Party-list Innovation
- B.** RA No. 7941, the Party-List System Act
- C.** Jurisprudential Developments
 - a. *Ang Bagong Bayani*
 - b. *Banat*
- D.** The Party-list System of elections under the constitution and RA 7941: Revisiting *Ang Bagong Bayani* and its errors
 - a. The Aim or Objective of the Party-List System
 - a.1. From the Constitutional Perspective.
 - a.2. From the statutory perspective
 - b. Party participation under the party-list system
 - b.1. Impact on political parties
 - c. The parties and their nominees
 - c.1. Refusal or cancellation of registration due to nominee problems
 - c.2. party nominee relationship
- E.** Chief Justice Sereno's Reflections
- F.** The Eleven-Point Parameters for COMELEC Action

I.A The Cases

The Court resolves **fifty-three (53) consolidated petitions** for *certiorari*/prohibition filed under Rule 64 of the Rules of Court by various party-list groups and organizations. They commonly assail the COMELEC's resolutions, either cancelling their existing registrations and accreditations, or denying their new petitions for party-list registration.

Of the 53 petitions, **thirteen (13) were instituted by new party-list applicants** under Republic Act (RA) No. 7941 and COMELEC Resolution No. 9366 (dated February 21, 2012). These petitions were denied by the COMELEC *En Banc* upon its review of the COMELEC Division's resolutions.

The **other forty (40) petitions** were similarly brought by **previously registered and accredited party-list organizations** whose registrations/accreditations have been cancelled. These petitioners

participated in previous elections and cannot participate in the May 2013 election if the cancellation of their registration/accreditation would stand.

The consolidated petitions, uniformly citing **grave abuse of discretion** on the part of the COMELEC and the **disregard of the relevant provisions of the Constitution and RA No. 7941**, variously questioned –

- a. the COMELEC *En Banc*'s authority under COMELEC Resolution No. 9513 to conduct an *automatic review* of its Division's rulings despite the absence of motions for reconsideration, in disregard of Rule 19 of the COMELEC Rules of Procedure;
- b. with respect to the cancellation of previous registration/accreditation of party-list groups or organizations, the *denial of due process* and the violation of the principle of *res adjudicata*; further, the COMELEC's cancellation of their existing registration/accreditation is claimed to be an exercise of its *quasi-judicial powers* that the COMELEC Division, not the COMELEC *En Banc*, can exercise at the first instance;
- c. the COMELEC *En Banc*'s appreciation of facts and its application of the guidelines of *Ang Bagong Bayani*, which either addressed defects or deficiencies on the part of the parties or of their nominees and which resulted in the refusal or cancellation of registration/accreditation.

I.B. The Issues

Based on these cited grounds, the issues for the Court's consideration may be condensed as follows:

1. Whether the COMELEC *En Banc* may automatically review the decision of the COMELEC Division without the requisite filing of a motion for reconsideration under the COMELEC Rules of Procedure; and
2. Whether the COMELEC gravely abused its discretion in denying or cancelling the registration/accreditation of the petitioners, mainly relying on the eight point guidelines laid down by the Court in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*.

II. SUMMARY OF POSITIONS

THE SUBSTANTIVE ASPECT OF THE PETITIONS

II.A. On reliance on *Ang Bagong Bayani* and its Guidelines.

Ang Bagong Bayani-OFW Labor Party v. COMELEC's¹ **intrinsically flawed interpretation** of the relevant constitutional and statutory provisions is the main source of the present controversy. Its constricted interpretation of the statutory phrase “marginalized and underrepresented” has invited more questions than answers that the framers of the 1987 Constitution in fact sought to avoid.

II.A.1. Points of Disagreement with *Ang Bagong Bayani*.

I take the position that it is time to re-visit this oft-cited ruling before the party-list system is further led astray.

First, the party-list system came into being, principally driven by the constitutional framers' intent to ***reform the then prevailing electoral system*** by giving marginal and underrepresented parties (*i.e. those who cannot win in the legislative district elections and in this sense are marginalized and may lack the constituency to elect themselves there, but who – nationally – may generate votes equivalent to what a winner in the legislative district election would garner*) the chance to participate in the electoral exercise and to elect themselves to the House of Representatives through a system other than the legislative district elections.

Ang Bagong Bayani ***glossed over*** the constitutional text and made ***a slanted reading*** of the intent of the framers of the Constitution. By these means, it erroneously concluded that *the party-list system is primarily intended as a social justice tool, and was not principally driven by intent to reform electoral system*. Thus, under its First Guideline, ***Ang Bagong Bayani*** **solely viewed the party-list system from the prism of social justice, and not from the prism of electoral reform as the framers of the Constitution originally intended.**

Second. In the constitutional deliberations, the proponents of the electoral reform concept were opposed by those who wanted a party-list system open ***only*** to sectoral representation, particularly to sectoral groups with social justice orientation.

The oppositors were defeated, but the proponents nevertheless opened the system to sectoral representation and in fact gave the social justice

¹ 412 Phil. 308, 342 (2001).

groups a head-start by providing for their representation through selection in the first three elections.

In the resulting *approved* wording, the Constitution made a textual commitment *to open the party-list system to registered national, regional and sectoral parties or organizations*. The Article on the Commission on Election also pointedly provided that there shall be a “*free and open party system,*” and *votes for parties, organizations or coalitions shall only be recognized in the party-list system*.

II.A.2. Effects on the Components of the Party-list System

Ang Bagong Bayani admits that even political parties may run in the party-list elections but **maintains** under its Second Guideline that **they must qualify as marginal and underrepresented as this phrase is understood in the social justice context. This is totally incorrect.**

Based on the reasons discussed above and further expounded below, even major *political parties* can participate in party-list elections because *the party-list system is open to all registered political, national, regional, sectoral organizations and parties, subject only to the limitations imposed by the Constitution and by law*. Further, *both political and sectoral parties have equal roles and participation in the party-list system*; again, they are subject to the same limitations imposed by law (the Constitution and RA No. 7941) and are separately burdened only by the limitations intrinsic to their respective natures. To summarize:

- a) **For political parties (whether national or regional):** to be classified as political parties, they must advocate an ideology or platform, principles and policies, for the general conduct of government. The application of the further requirement under RA No. 7941 (that as the most immediate means of securing the adoption of their principles of governance, they must regularly nominate and support their leaders and members as candidates for public office) shall depend on the particular circumstances of the party.

The marginal and under-representation in the electoral sense (*i.e.*, in the legislative district elections) and lack of constituency requirements fully apply, but there is no reason not to presume compliance with these requirements *if political parties are not participants in any legislative district elections*.

Major political parties, if they participate in the legislative district elections, cannot participate in the party-list elections, nor

can they form a coalition with party-list parties and run as a coalition in the party-list elections.

A coalition is a formal party participant in the party-list system; what the party-list system forbids directly (*i.e.*, participation in both electoral arenas), the major political parties cannot do indirectly through a coalition. No prohibition, however, exists against *informal alliances* that they can form with party-list parties, organizations or groups running for the party-list elections. The party-list component of these informal alliances is not prohibited from running in the party-list elections.

- b) **For sectoral parties and organizations**, they must belong to the sectors enumerated in Section 5(2), Article VI of the 1987 Constitution and Section 5 of RA No. 7941 that are mainly based on social justice characteristics; or must have interests, concerns or characteristics specific to their sectors although they do not require or need to identify with any social justice characteristic. In either case, they are subject to the “marginalized and under-represented” and the “constituency” requirements of the law through a showing, supported by evidence, that they belong to a sector that is actually characterized as marginal and under-represented.

These parties and organizations are additionally subject to the general overriding requirement of **electoral marginalization and under-representation** and **the constituency requirements** of the law, but there is no reason why compliance with these requirements cannot be presumed if they are not participants in any legislative district elections.

- c) **Compliance with COMELEC Rules**. To justify their existence, all party-list groups must comply with the requirements of law, their own internal rules on membership, and with the COMELEC’s Rules of Procedure. They must submit to the Commission on Elections (*COMELEC*) their constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require.²

To sum up these *Ang Bagong Bayani* objections, the party-list system – as **principally espoused by Commissioner Christian Monsod** and duly approved by the Commission’s vote – maintained its electoral reform objectives while significantly contributing to the social justice thrust of the Constitution.

²

RA No. 7941, Section 5.

*It is not correct to say, as the Chief Justice did in her Reflections, that this Separate Opinion is not “appropriately sensitive to the context from which it [the 1987 Constitution] arose.” I recognize the social justice content of the party-list provisions in the Constitution and the law; I simply cannot give these provisions the **primacy** that both the framers of the Constitution and Congress did not see fit to accord.*

B. On Nominees

Third. Considering the Constitution’s solicitous concern for the marginalized and under-represented sectors as understood in the social justice context, and RA 7941’s requirement of mere bona fide membership of a nominee in the party-list group, *a nominee who does not actually possess the marginalized and underrepresented status represented by the party-list group but proves to be a genuine advocate of the interest and concern of the marginalized and underrepresented sector represented is still qualified to be a nominee.*

This classification of nominees, however, is relevant only to *sectoral parties and organizations* which are marginalized and underrepresented in the social justice sense or in terms of their special interests, concerns or characteristics. To be consistent with the *sectoral representation* envisioned by the framers, *a majority of the members* of the party must actually belong to the sector represented, while *nominees must be a member of the sectoral party or organization.*

Since *political parties* are identified by their ideology or platform of government, *bona fide membership*, in accordance with the political party’s constitution and by-laws, *would suffice.*

In both political or sectoral party or group, **party membership** is the most tangible link *of the nominees* to their respective parties and to the party-list system.

Subject to the above, the *disqualification of the nominee* does not necessarily mean the disqualification of the party since all the grounds for cancellation or refusal of registration pertain to the party itself.

I make the qualification that the law’s³ requirement of the submission of a *list containing at least five (qualified) nominees* is mandatory, and a party’s inexcusable failure to comply with this requirement warrants the refusal or cancellation of its registration under Section 6 of RA 7941.

³

RA No. 7941, Section 8.

C. On the Observations of the Chief Justice

As my **fourth and final point**, the “textualist” approach that the Chief Justice objects to, has been driven, and is fully justified, by the above reading of the Constitution and the law.

*As a **basic constitutional point**, the business and principal function of this Court (and of the whole Judiciary) is not to create policy or to supplant what the Constitution and the law expressly provide. The framers of the Constitution and Congress (through RA No. 7941 in this case) provided the policy expressed through the words of the Constitution and the law, and through the intents the framers; both were considered and cited to ensure that the constitutional policy is properly read and understood. The whole Judiciary, including this Court, can only apply these policies in the course of their assigned task of adjudication *without adding anything of our own*; we can interpret the words only in case of ambiguity.*

This Court and its Members cannot likewise act as advocates, even for social justice or for any ideology for that matter, as advocacy is not the task assigned to us by the Constitution. To play the role of advocates, or to formulate policies that fall within the role of the Legislative Branch of government, would be a violation of our sworn duty.

D. Grave Abuse of Discretion and Conclusion

As agreed upon by the Majority during the deliberations of this case, the Court suspended the Rules of Court in considering the Rule 64 petitions before us in light of the clear and patent violation of the Constitution that the Majority **unanimously** found.

Thus, without an explicit ruling on the grave abuse of discretion in this case, I vote to **VACATE** the ruling of the COMELEC pursuant to the suspended rules in light of our finding of patent violation of the Constitution after revisiting and overturning the *Ang Bagong Bayani* ruling.

Having said these, however, I reflect for the record my view that a grave abuse of discretion exists.

Undeniably, all the parties to these consolidated cases – namely, the petitioners and the COMELEC – relied upon and were all guided by the *Ang Bagong Bayani* ruling. However, my re-examination of *Ang Bagong Bayani* and its standards, in light of what the text and intents of the Constitution and RA No. 7491 provide, yield a result different from what *Ang Bagong Bayani* reached.

As will be discussed extensively in this Separate Opinion, **wrong considerations were used** in ruling on the consolidated petitions, resulting

in **gross misinterpretation and misapplication of the Constitution**. This is **grave abuse of discretion** that taints a decision maker's action,⁴ infinitely made worse in this case because the Constitution itself is involved.

An added basis for a finding of grave abuse of discretion pertains specifically to the COMELEC's refusal or cancellation of registration of the party-list group based, solely or partly, on the disqualification of the nominee. As discussed below, **this action and any refusal or cancellation of registration is completely devoid of basis in fact and in law and in this sense constitutes grave abuse of discretion.**

In these lights, **I vote for the REMAND of ALL the petitions** to the COMELEC in accordance with the terms of this Separate Opinion.

III. **PRELIMINARY MATTERS**

A. **The existence of jurisdictional error that warrants reviewing COMELEC's action**

Whether acting in the exercise of its purely administrative power, on one hand, or quasi-judicial powers, on the other hand, the judicial remedy available to an aggrieved party is the remedy of *certiorari* under Rule 64, in relation with Rule 65. Court action under this rule is rendered necessary by the reality that, by law, the COMELEC en banc decision is final and executory and should stand unless nullified by this Court through a writ of *certiorari*.

For the writ of *certiorari* to issue, the Rules of Court expressly require that the tribunal must have acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The requisite grave abuse of discretion is in keeping with the office of the writ of *certiorari*; its function is to keep the tribunal within the bounds of its jurisdiction under the Constitution and law.

The term grave abuse of discretion, while it defies exact definition, generally refers to capricious or whimsical exercise of judgment that is equivalent to lack of jurisdiction; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.⁵

⁴ *Varias v. COMELEC*, G.R. No. 189078, Feb. 11, 2010.

⁵ *Mitra v. Commission on Elections*, G.R. No. 191938, July 2, 2010.

Arguably under the above standards, it may be claimed that since the COMELEC merely complied with the prevailing jurisprudence (in particular, with the Court's pronouncement in *Ang Bagong Bayani v. COMELEC* and *Banat v. COMELEC*), then it could not have acted without or in excess of its jurisdiction, much less with grave abuse of discretion. Besides, the writ of *certiorari* only lies when the respondent is exercising judicial or quasi-judicial functions, which is not so in the present case.

This rationalization, however, is *only superficially sound* as the gross misinterpretation and misapplication of the Constitution cannot be allowed by this Court in its role and duty as guardian of the Constitution. Where a misinterpretation or misapplication of the Constitution occurs, the result is a constitutional violation that this Court cannot be prevented from addressing through the exercise of its powers through the available medium of review under the Rules of Court. To hold otherwise is to countenance a violation of the Constitution – a lapse that cannot and should not happen under our legal system.

Otherwise stated, if the Court were to sustain the view that the mere application of a prevailing rule or doctrine negates a finding of grave abuse of discretion, ***in spite of a glaring error in the doctrine's interpretation of the Constitution***, then the Court would have no chance to correct the error, except by laying down a new doctrine that would operate prospectively *but* at the same time dismissing the petition for failure to show grave abuse of discretion. To be sure, this is a course of action the Court cannot take if it were to faithfully discharge its solemn duty to hold the Constitution inviolate. For the Court, action under these circumstances is a must; no ifs or buts can be allowed to be heard about its right and duty to act.

It should be considered, too, that in the adjudication of a case with constitutional dimensions, it is the letter and the spirit of the Constitution itself that reign supreme. The Court's previous ruling on a matter serves as a guide in the resolution of a similar matter in the future, but this prior ruling cannot inflexibly bind the Court in its future actions. As the highest Court in our judicial hierarchy, the Court cannot tie its hands through its past actions, particularly when the Constitution is involved; it is invested with the innate authority to rule according to what it sees best in its role as guardian of the Constitution.⁶

Additionally, be it remembered that the rulings of this Court are not written in stone and do not remain un-erased and applicable for all times *under all circumstances*. The Supreme Court's review of its rulings is in a sense a continuing one as these are made and refined in the cases before the Court, taking into account what it has said on the similar points in the past. This is the principle of *stare decisis* that fosters the stability of rulings and decisions. This principle, however, is not an absolute one that applies even if an incisive examination shows that a past ruling is inaccurate and is far from

⁶ See: *De Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010.

a faithful interpretation of the Constitution, or in fact involves a constitutional violation. In this excluded circumstance, both the rule of reason and the commands of the Constitution itself require that the past ruling be modified and, if need be, overturned.⁷ Indeed, if the act done is contrary to the Constitution, then the existence of grave abuse of discretion cannot be doubted.⁸

As will be discussed extensively in this Separate Opinion, the *Ang Bagong Bayani* ruling does not rest on firm constitutional and legal grounds; its slanted reading of the text of the constitution and its myopic view of constitutional intent led it to a grave error never envisioned by the framers of our constitution.

By ordering the remand of all the petitions to the COMELEC and for the latter to act in accordance with the new ruling laid down by the Court – *i.e.*, allowing political parties to participate in the party-list elections without need of proving that they are “marginalized and under-represented” (as this term is understood in *Ang Bagong Bayani*), and in recognizing that a genuine advocate of a sectoral party or organization may be validly included in the list of nominees – the Court would not be violating the principle of prospectivity.⁹

⁷ See: Justice Arturo Brion’s Concurring and Dissenting Opinion in *De Castro v. Judicial and Bar Council*. See also Justice Reynato Puno’s Dissenting Opinion in *Lambino v. Commission on Elections*, G.R. No. 174153, October 25, 2006, where he stated:

“...Two strains of *stare decisis* have been isolated by legal scholars. The first, known as vertical *stare decisis* deals with the duty of lower courts to apply the decisions of the higher courts to cases involving the same facts. The second, known as horizontal *stare decisis* requires that high courts must follow its own precedents. Prof. Consovoy correctly observes that vertical *stare decisis* has been viewed as an obligation, while horizontal *stare decisis*, has been viewed as a policy, imposing choice but not a command. Indeed, *stare decisis* is not one of the precepts set in stone in our Constitution.”

It is also instructive to distinguish the two kinds of horizontal *stare decisis* — constitutional *stare decisis* and statutory *stare decisis*. **Constitutional *stare decisis*** involves judicial interpretations of the Constitution while **statutory *stare decisis*** involves interpretations of statutes. The distinction is important for courts enjoy more flexibility in refusing to apply *stare decisis* in constitutional litigations. **Justice Brandeis’ view** on the binding effect of the doctrine in constitutional litigations still holds sway today. In soothing prose, Brandeis stated: “*Stare decisis* is not . . . a universal and inexorable command. The rule of *stare decisis* is not inflexible. Whether it shall be followed or departed from, is a question entirely within the discretion of the court, which is again called upon to consider a question once decided.” In the same vein, the venerable **Justice Frankfurter** opined: “the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.” In contrast, the application of *stare decisis* on judicial interpretation of statutes is more inflexible. As **Justice Stevens** explains: “after a statute has been construed, either by this Court or by a consistent course of decision by other federal judges and agencies, it acquires a meaning that should be as clear as if the judicial gloss had been drafted by the Congress itself.” This stance reflects both respect for Congress’ role and the need to preserve the courts’ limited resources.

⁸ *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. No. 159139, January 13, 2004.

⁹ Articles 4 and 8 of the Civil Code reads:

Art. 4. Laws shall have no retroactive effect, unless the contrary is provided.

The rationale behind the principle of prospectivity – both in the application of law and of judicial decisions enunciating new doctrines – is the protection of vested rights and the obligation of contracts. When a new ruling overrules a prior ruling, the prospective application of the new ruling is made in favor of parties who have relied in good faith on the prior ruling under the familiar rule of *lex prospicit, non respicit*.

Obviously, the force of this rationale finds no application in this case, for, ***a ruling overturning Ang Bagong Bayani broadens the base of participation in the party-list system of election*** based on the text and intent of the Constitution. Thus, no one can claim that the application of this ruling in the upcoming 2013 election would operate to the prejudice of parties who relied on the *Ang Bagong Bayani* ruling; the marginalized and under-represented sectors (as the term is understood in *Ang Bagong Bayani*) continue to be eligible to participate in the party-list elections, subject to the determination of parties' individual circumstances by the COMELEC.

**B. COMELEC power to register
and to cancel registration of a
party-list group is an exercise of
its administrative powers**

The COMELEC *En Banc*'s authority under COMELEC Resolution No. 9513 – *i.e.*, to conduct summary hearings for the purpose of determining the registered parties' continuing compliance with the law and the regulations and to review the COMELEC Division's ruling granting a petition for registration – is appropriately an exercise of the COMELEC's **administrative power** rather than its quasi-judicial power. In the exercise of this authority, the COMELEC may automatically review the decision of its Divisions, without need for a motion to reconsider the grant of a petition for registration; it may also conduct summary hearings when previously registered party-list groups file their manifestation of intent to participate in the coming elections.

The case of *Santiago, Jr., etc. v. Bautista, et al.*¹⁰ already provides us ample guidance and insights into what distinguishes administrative and quasi-judicial powers from one another. On the issue of whether the remedy of *certiorari* (which can only be invoked when the respondent exercises judicial or quasi-judicial functions) would lie against a public school committee whose function was to determine the ranking of selected honor students for its graduating class, the Court gave a negative answer and said:

Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

¹⁰

143 Phil. 209 (1970).

From the [foregoing], it will be gleaned that before a tribunal, board, or officer may exercise judicial or quasi judicial acts, it is necessary that there be a **law that gives rise to some specific rights** of persons or property under which **adverse claims** to such rights are made, and the controversy ensuing therefrom is brought, in turn, before the tribunal, board or officer clothed with power and authority to determine what that law is and thereupon **adjudicate the respective rights of the contending parties**. As pointed out by appellees, however, there is nothing on record about any rule of law that provides that when teachers sit down to assess the individual merits of their pupils for purposes of rating them for honors, such function involves the determination of what the law is and that they are therefore automatically vested with judicial or quasi judicial functions.¹¹ (citation omitted; emphases ours)

In the present case, no pretense at all is claimed or made that a petition for registration or the determination of a registered party's continuing compliance with existing laws, rules and jurisprudence entails the assertion of a right or the presence of a conflict of rights. In a registration or compliance proceeding, an applicant simply attempts to prove its possession or continued possession of the requisite qualifications for the purpose of availing the *privilege* of participating in an electoral exercise. Thus, no real adjudication entailing the exercise of quasi-judicial powers actually takes place.

Additionally, the inapplicability of the principle of *res judicata* in these registration proceedings necessarily weakens any claim that adjudication, done in the exercise of quasi-judicial functions, is involved. Each election period is *sui generis* - a class in itself, and any registration or accreditation by a party-list group is only for the purpose of the coming election; it does not grant any registered party-list group any mantle of immunity from the COMELEC's power of review as an incident of its power to register. To hold otherwise would emasculate the COMELEC as an independent constitutional commission, and weaken the crucial role it plays in our republican democracy.

IV. DISCUSSION: MERITS OF THE PETITIONS

I take the firm position that this Court should now **revisit** its ruling in *Ang Bagong Bayani* before our party-list system drifts any farther from the text and spirit of the constitutional and statutory commands.

These Discussions shall dwell on the reasons supporting this approach and my conclusions.

¹¹

Id. at 219.

A. The Constitutional Provisions
on the Party-list System

a. The Constitutional Text.

The only constitutional provisions directly dealing with the party-list system of election are **Section 5(1) and (2) of Article VI**, and **Sections 2, 6 and 7, Article IX-C** of the **1987 Constitution**.

The cited Article VI section 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.**

(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. [emphasis, underscores and italics ours]

Article IX-C of the 1987 Constitution, on the other hand, is the article on the COMELEC, and the cited sections quoted below are its provisions related to the party-list system.

Section 2. The Commission on Elections shall exercise the following powers and functions:

x x x x

(5) ***Register***, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. x x x

x x x x

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. [emphases and italics ours]

These provisions are specifically mentioned and shall be cited throughout this Separate Opinion as they are the essential take-off points in considering, appreciating and implementing the party-list system.

b. The Constitutional Text Summarized

Paraphrased and summarized, the terms of the Constitution relating to the party-list system essentially provide that:

1. The House of Representatives shall be composed of members elected from *legislative districts*, and *those who are elected through a party-list system*.
2. The *members of the House of Representatives under the party-list system* are those who are *elected, as provided by law*, thus, plainly leaving the mechanics of the system to future legislation.
3. The members under the system shall be *elected through registered national, regional, sectoral parties and organizations*, thus, textually identifying the recognized component groupings in the party-list system; they must all *register with the COMELEC* to be able to participate.
4. *To be voted* under the party-list system are the *component political parties, organizations and coalitions*, in contrast with the individual candidates voted upon in legislative district elections.
5. The party-list representatives shall constitute *twenty per centum of the total number of representatives*, including those in the party-list.
6. For *three consecutive terms* after the ratification of the 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 minorities, women, youth, and such other sectors as may be provided by law*, except the religious sector.
7. The Constitution allows a *free and open party system* that shall evolve according to the free choice of the people, within the limits of the Constitution.

c. Purpose Behind the Party-list Innovation

Unmistakably, the quoted constitutional texts are both terse and general in their terms. However, they are not, in fact, as bare as they would seem, as the words used carry *meanings and intents*¹² expressed during the deliberations *and the voting* that took place to determine what the Constitution would exactly provide.¹³

Basic **in understanding the constitutional text is the intent** that led to the modification of the system of legislative district elections that the country has used even before the 1935 Constitution.

The traditional system, incidentally, is the *legislative district system* that remains described in the Constitution as election by district “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.”¹⁴

The proponent, Commissioner Christian Monsod, described the **new party-list system in terms of its purpose**, as follows:¹⁵

The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide, have about 1,000,000 or 1,500,000 votes. But they were always *third place or fourth place in each of the districts*. So, they have no voice in the Assembly. But this way, *they would have five or six representatives in the Assembly even if they would not win individually in legislative districts*. So, that is essentially the mechanics, the purpose and objectives of the party list system. [italics, emphases and underscores ours]

These same purpose and objective were reiterated in the Commissioner’s subsequent statement when he said –

¹² In *Francisco, Jr. v. The House of Representatives* (460 Phil. 830, 885-886), the Court held: “where there is ambiguity, *ratio legis est anima*. x x x

x x x x

x x x *The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect.* The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. *It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers.* [italics, emphasis and underscore supplied]

¹³ The deliberations, together with voting on the various issues raised and the wording of the constitutional text of the party-list provision, took place on July 22, 1986, July 25, 1986 and August 1, 1986.

¹⁴ 1987 CONSTITUTION, Article VI, Section 5(1).

¹⁵ II RECORD of the CONTITUTIONAL COMMISSION, p. 86.

The whole purpose of the system is precisely to give room for those who have a national constituency who may never be able to win a seat on a legislative district basis. But they must have a constituency of at least 400,000 in order to claim a voice in the National Assembly.¹⁶

thus, leaving no doubt on *what the party-list system conceptually is and why it was established*.

B. RA No. 7941, the Party-List System Act

Following the ratification of the 1987 Constitution, President Corazon Aquino appointed representatives of the sectors mentioned in the Constitution, namely: labor, peasant, urban poor, indigenous cultural minorities, women, and youth, who acted as the party-list representatives for the first three (3) elections under this Constitution.

In March 1995, Congress enacted **RA No. 7941, the Party-List System Act**, as the law that would implement the party-list election scheduled for May 1998. The law at the same time fleshed out the mechanics for party-list elections, in accordance with the terms of the Constitution. The law specifically provided for:

- a. a *declaration of the policy* behind the law;
- b. a *definition of terms*, specifically defining the terms *national, political, regional, and sectoral parties, and their coalitions*;
- c. the requisites and terms for *registration*; the grounds for *refusal and cancellation of registration*; and the certified list of registered parties;
- d. the nomination and qualification for *party-list representatives*;
- e. the *manner of voting*;
- f. the *number and procedure* for the allocation of party-list representatives; and
- g. the *proclamation of the winning party-list representatives*, their term of office; the limitation on their change of affiliation; their rights; and the provisions in case of vacancy.

Reflecting the constitutional intents, the law defined the **party-list system** as:

a *mechanism of proportional representation* in the election of representatives to the House of Representatives *from national, regional and sectoral parties or organizations or coalitions* thereof registered with the Commission on Elections (COMELEC). Component parties or organizations of a coalition may participate independently provided the

¹⁶

Id. at 259.

coalition of which they form part does not participate in the party-list system.¹⁷ (emphases and italics ours)

and clarified the State's **policy, objectives and means**, as follows:

a. the ***promotion of 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;

b. with the aim of ***enabling 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; and

c. for the development and 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 of Representatives by enhancing their chances to compete for and win seats in the legislature under the simplest scheme possible.¹⁸

RA No. 7941 likewise succinctly **defined the component groupings recognized by law** in the party-list system, as follows:

(b) A ***party*** means either a political party or a sectoral party or a coalition of parties.

(c) A ***political party*** refers to an organized group of citizens advocating an *ideology or platform, principles and policies for the general conduct of government* and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.

It is a ***national party*** when its constituency is spread over the geographical territory of at least a majority of the regions. It is a ***regional party*** when its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.

(d) A ***sectoral party*** refers to an organized group of citizens belonging to any of the sectors enumerated [labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals] whose principal advocacy pertains to the special interest and concerns of their sector.

¹⁷ RA No. 7941, Section 3(a).

¹⁸ RA No. 7941, Section 2.

(e) A *sectoral organization* refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns.

(f) A *coalition* refers to an aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.¹⁹ (emphases and italics ours)

Notably, the definitions carried no significant qualifications, preferences, exclusions or limitations by law on what the recognized party-list groupings should be, although Section 6 of RA No. 7941 specified and defined the grounds for disqualification.

C. Jurisprudential Developments

a. The Ang Bagong Bayani Case

In 2001, the first judicial test in the implementation of the party-list system came through the *Ang Bagong Bayani* case where the petitioners sought the disqualification of the private respondents, among whom were major political parties. The Court resolved, among others, the following issues:

1. whether political parties may participate in party-list elections; and
2. whether the party-list system is exclusive to “marginalized and underrepresented” sectors and organizations.

The majority ruling held that *political parties may participate* in party-list elections, provided that the requisite character of these parties or organizations must be consistent with the Constitution and RA No. 7941. The *party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies*, identifying them, non-exclusively, as the labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals. The *party-list nominees*, as well, must be *Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties*.

Based on its conclusions, the majority provided the guidelines for the party-list system, summarized below:

¹⁹ RA No. 7941, Section 3(b) to (f).

First, the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941. In other words, it must show – through its constitution, articles of incorporation, bylaws, history, platform of government and track record – that it represents and seeks to uplift marginalized and underrepresented sectors. Verily, *majority of its membership should belong to the marginalized and underrepresented.* And it must demonstrate that in a conflict of interests, it has chosen or is likely to choose the interest of such sectors.

Second, while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling "Filipino citizens belonging to marginalized and underrepresented sectors x x x to be elected to the House of Representatives." In other words, while *they are not disqualified merely on the ground that they are political parties, they must show, however, that they represent the interests of the marginalized and underrepresented.* x x x

x x x x

Third, [by an] express constitutional provision[,] the religious sector may not be represented in the party-list system. x x x

x x x x

Fourth, a party or an organization must not be disqualified under Section 6 of RA 7941, which enumerates the grounds for disqualification[.]

x x x x

Fifth, the party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government. By the very nature of the party-list system, the party or organization must be a group of citizens, organized by citizens and operated by citizens. It must be independent of the government. x x x

Sixth, the party must not only comply with the requirements of the law; its nominees must likewise do so. Section 9 of RA 7941 [contains the qualifications of party-list nominees, with special age-related terms for youth sector candidates].

Seventh, not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees. x x x [U]nder Section 2 of RA 7941, the nominees must be Filipino citizens "who belong to marginalized and underrepresented sectors, organizations and parties." x x x

Eighth, x x x the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.²⁰ (italics and emphases ours)

b. BANAT Case

*Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*²¹ is essentially a case on the computation of the allocation of seats based on the party-list votes. Despite the *Ang Bagong Bayani* ruling, the question of ***whether the Constitution prohibits political parties from participating in the party-list elections*** remained a live issue in this case.

By a vote of 8-7, the Court decided to **disallow major political parties from participating in the party-list elections, directly or indirectly**; thus, effectively reversing the ruling in *Ang Bagong Bayani* that major political parties may participate in the party-list system, provided they represent the marginalized and underrepresented sectors. Chief Justice Reynato S. Puno cited two reasons for disallowing the participation of major political parties:

1. Limiting the party-list system to the marginalized and excluding the major political parties from participating in the election of their representatives are aligned with the constitutional mandate to reduce social, economic and political inequalities and remove cultural inequalities by equitably diffusing wealth and political power for the common good.

2. Allowing major political parties to participate in the party-list system electoral process will suffocate the voice of the marginalized, frustrate their sovereignty, and betray the democratic spirit of the Constitution.

The minority view²² took the position that neither the Constitution nor RA No. 7941 prohibits major political parties from participating in the party-list system. It maintained that, on the contrary, the framers of the Constitution clearly intended the major political parties to participate in party-list elections through their sectoral wings, and this Court cannot engage in socio-political engineering and judicially legislate the exclusion of major political parties from party-list elections, in patent violation of the Constitution and the law.

Moreover, the minority maintained that the Party-List System Act and the deliberations of the Constitutional Commission state that major political parties are allowed to coalesce with sectoral organizations for electoral or

²⁰ *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, *supra* note 4, at 342-345.

²¹ G.R. Nos. 179271 and 179295, April 21, 2009, 586 SCRA 210.

²² See *ponencia* of Justice Antonio T. Carpio.

political purposes. The other major political parties can thus organize or affiliate with their chosen sector or sectors, provided that their nominees belong to their respective sectors. Nor is it necessary that the party-list organization's nominee "wallow in poverty, destitution, and infirmity," as there is no financial status or educational requirement in the law. It is enough that the nominee of the sectoral party belongs to the marginalized and underrepresented sectors; that is, if the nominee represents the fisherfolk, he must be a fisherfolk, if the nominee represents the senior citizens, he must be a senior citizen.

D. The Party-list System of elections under the constitution and RA 7941: Revisiting *Ang Bagong Bayani* and its errors

I opened these Discussions by quoting the plain terms of the Constitution and of the law to stress these terms for later comparison with *Ang Bagong Bayani*. In this manner, *Ang Bagong Bayani's* slanted reading of the Constitution and the laws can be seen in bold relief. *Its main mistake is its erroneous reading of the constitutional intent, based on the statements of a constitutional commissioner that were quoted out of context, to justify its reading of the constitutional intent.*²³ Specifically, it relied on the statements of Commissioner Villacorta, an advocate of sectoral representation, and glossed over those of Commissioner Monsod and the results of the deliberations, as reflected in the resulting words of the Constitution.²⁴ Thus, its conclusion is not truly reflective of the intent of the framers of the Constitution. This error is fatal as its conclusion was then used to justify his interpretation of the statute, leading to a bias for the social justice view.

a. The Aim or Objective of the Party-List System

a.1. From the Constitutional Perspective.

The *aim of the party-list provision*, Section 5, Article VI of the Constitution, is principally *to reform* the then existing electoral system by

²³ II RECORD of the Constitutional Commission, p. 561. Stated by Commissioner Villacorta prior to the approval of the amendment that became Section 5(1), Article VI of the 1987 Constitution:

Mr. Villacorta. I would like to report that the proponents of sectoral representation and of the party list system met to thoroughly discuss the issues and have arrived at a compromise formula.

On this first day of August 1986, we shall, hopefully, usher in a new chapter in our national history by giving genuine power to our people in the legislature. Commissioner Monsod will present to the Committee on the Legislative the amendment to Section 5 which we have agreed upon. [emphasis and underscore ours]

²⁴ The underlined and boldfaced portion was lifted out of context in *Ang Bagong Bayani*. See Dissent of J. Vicente V. Mendoza which discussed the Villacorta and Monsod positions, as well as the statements of Commissioners Jaime Tadeo and Blas Ople, based on the record of the Constitutional Commission.

adding a new system of electing the members of the House of Representatives. The innovation is a party-list system that would expand opportunities for electoral participation to allow those who could not win in the legislative district elections a fair chance to enter the House of Representatives other than through the district election system.

Otherwise stated, the aim is *primarily electoral reform - not to provide a social justice mechanism* that would guarantee that sectors (described in social justice context by its constitutional deliberation proponents as “marginalized”) would exclusively occupy, or have reserved, seats in the House of Representatives under the party-list system. This is one glaring error that is evident right from the opening statement of *Ang Bagong Bayani* when it described the party-list system as “a social justice tool.” While the party-list system can indeed serve the ends of social justice by providing the *opportunity* – through an open, multi-party system – for the social justice sector groups that have no chance to win in legislative district elections, the party-list system was not established primarily for this purpose.

The best proof of this characteristic comes from the words of the Constitution itself which do not provide for exclusive or guaranteed representation for sectoral groups in the party-list system. If at all, the constitutional text only provided a guarantee of 50% participation for specified sectoral groups, but the *guarantee was only for the first three (3) elections after the ratification* of the Constitution.²⁵

The deliberations where the words of the Constitution were framed and adopted confirm the primacy of electoral reform as against social justice objectives. The electoral reform view was espoused by the author of the provision, Commissioner Monsod, and his proposed amendment²⁶ met vigorous objections from Commissioner Eulogio Lerum and Commissioner Jaime Tadeo, who then sought to have guaranteed or reserved seats for the “marginalized” sectors in order to prevent their “political massacre” should the Monsod amendment be allowed.²⁷

When voting took place, those *against* reserved seats for the marginalized sector won. Eventually, what was conceded to the latter was what the Constitution, as worded now, provides - *i.e.*, “**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 enumerated sectors.

²⁵ 1987 CONSTITUTION, Article VI, Section 5(2).

²⁶ On July 25, 1986.

²⁷ II RECORD of the Constitutional Commission, pp. 255, 561-562. See also the Dissents of Justice Jose C. Vitug and Justice Vicente Mendoza in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, *supra* note 4.

Indeed, if the concept of “marginalized” would be applied to the party-list system, *the term should apply to the national, regional, and sectoral parties or organizations that cannot win in the traditional legislative district elections* (following the explanation of Commissioner Monsod), not necessarily to those claiming marginalization in the social justice context or because of their special interests or characteristics. The term, of course, can very well be applicable to the latter if they indeed cannot win on their own in the traditional legislative district elections. These aspects of the case are further discussed and explained below.

a.2. From the Statutory Perspective.

Even from the perspective of RA No. 7941, the policy behind the party-list system innovation does not vary or depart from the basic constitutional intents. The objective continues to be electoral reform, expressed as the *promotion of 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, *under 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.²⁸

It should be noted that it was under RA No. 7941 that the words “marginalized and underrepresented” made their formal appearance in the party-list system. It was used in the context of defining *one of the aims* of the system, *i.e.*, to *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*.

This entry and use of the term is admittedly an effective and formal statutory recognition that *accommodates* the sectoral (in the special interest or concern or social justice senses) character into the party-list system (*i.e.*, in addition to the primary electoral reform purpose contemplated in the Constitution), but nevertheless does not render sectoral groups the exclusive participants in party-list elections. As already mentioned, this conclusion is not justified by the wording, aims and intents of the party-list system as established by the Constitution and under RA No. 9741.

Nor does the use of the term “marginalized and underrepresented” (understood in the narrow sectoral context) render it an absolute requirement to qualify a party, group or organization for participation in the party-list election, except for those in the sectoral groups or parties who by the nature of their parties or organizations necessarily are subject to this requirement.

²⁸

See Section 2 of RA No. 7941.

For all parties, sectors, organizations or coalition, however, the absolute overriding requirement – as justified by the principal aim of the system – remains to be a party, group or organization’s *inability to participate in the legislative district elections with a fair chance of winning*. To clearly express the logical implication of this statement, a party, group or organization already participating in the legislative district elections is presumed to have assessed for itself a fair chance of winning and should no longer qualify to be a participant in the party-list elections.

b. Party Participation under the Party-list System

The *members of the House of Representatives under the party-list system* are those who would be *elected, as provided by law*, thus, plainly leaving the mechanics of the system to future legislation. They are likewise constitutionally identified as the *registered national, regional, sectoral parties and organizations*, and are the party-list groupings *to be voted* under the party-list system under a *free and open party system* that should be allowed to evolve according to the free choice of the people within the limits of the Constitution.²⁹

From the perspective of the law, this party structure and system would hopefully foster proportional representation that would lead to the election to the House of Representatives of Filipino citizens: (1) who belong to marginalized and underrepresented sectors, organizations and parties; and (2) who lack well-defined constituencies; but (3) who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. The **key words** in this policy are “*proportional representation*,” “*marginalized and underrepresented*,” and “*lack of well-defined constituencies*.”

The term “marginalized and underrepresented” has been partly discussed above and would merit further discussion below. *Ang Bagong Bayani-OFW Labor Party v. COMELEC*,³⁰ on the other hand, defined the term “*proportional representation*” in this manner:

[I]t refers to the representation of the "marginalized and underrepresented" as exemplified by the enumeration in Section 5 of the law; namely, "labor, peasant, fisherfolk, urban poor, indigenous cultural, communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."³¹

As well, the case defined the phrase “*who lack well-defined political constituency*” to mean:

²⁹ Pages 19-23 of this Separate Opinion.

³⁰ *Supra* note 4.

³¹ *Id.* at 333.

refers to the absence of a traditionally identifiable electoral group, like voters of a congressional district or territorial unit of government. Rather, it points again to those with disparate interests identified with the "marginalized or underrepresented."³²

Thus, in both instances, *Ang Bagong Bayani* harked back to the term "marginalized and underrepresented," clearly showing how, in its view, the party-list system is bound to this descriptive term. As discussed above, *Ang Bagong Bayani*'s use of the term is not exactly correct on the basis of the primary aim of the party-list system. This error becomes more glaring as the case applies it to the phrases "proportional representation" and "lack of political constituency."

For clarity, Section 2 – the only provision where the term "marginalized and underrepresented" appears – reads in full:

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 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.

As defined in the law, a **party** refers to any of the three: a political party, a sectoral party, or a coalition of parties (Section 3[b] of RA No. 7941). As distinguished from sectoral parties or organizations – which generally advocate "interests or concerns" – a political party is one which advocates "**an ideology or platform, principles and policies**" of the **government**. In short, its identification is with or through its program of governance.

Under the *verba legis* or plain terms rule of statutory interpretation³³ and the maxim *ut magis valeat quam pereat*,³⁴ a combined reading of

³² *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, *supra* note 4, at 334.

³³ Per *Francisco, Jr. v. The House of Representatives* (*supra* note 7, at 884-885): *verba legis* signifies that "wherever possible, the words used in the Constitution must be given their ordinary meaning *except* where technical terms are employed. x x x We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the

Section 2 and Section 3 shows that the status of being “marginalized and underrepresented” is not limited merely to sectors, particularly to those enumerated in Section 5 of the law. The law itself recognizes that the same status can apply as well to “political parties.”

Again, the explanation of Commissioner Monsod on the principal objective of the party-list system comes to mind as it provides a ready and very useful answer dealing with the relationship and inter-action between sectoral representation and the party-list system as a whole:

We sought to avoid these problems by presenting a party list system. Under the party list system, there are no reserved seats for sectors. Let us say, laborers and farmers can form a sectoral party or a sectoral organization that will then register and present candidates of their party. How do the mechanics go? Essentially, under the party list system, every voter has two votes, so there is no discrimination. First, he will vote for the representative of his legislative district. That is one vote. In that same ballot, he will be asked: What party or organization or coalition do you wish to be represented in the Assembly? And here will be attached a list of the parties, organizations or coalitions that have been registered with the COMELEC and are entitled to be put in that list. **This can be a regional party, a sectoral party, a national party, UNIDO, Magsasaka or a regional party in Mindanao.** One need not be a farmer to say that he wants the farmers' party to be represented in the Assembly. Any citizen can vote for any party. At the end of the day, the COMELEC will then tabulate the votes that had been garnered by each party or each organization — one does not have to be a political party and register in order to participate as a party — and count the votes and from there derive

text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus these are the cases where the need for construction is reduced to a minimum.” (emphasis, underscore and italics ours)

³⁴ Id. at 887, “*ut magis valeat quam pereat*” - the Constitution is to be interpreted as a whole. “It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.” (Citing *Civil Liberties Union v. Executive Secretary*, G.R. Nos. 83896 & 83815, February 22, 1991, 194 SCRA 317.)

In other words, the Court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.

If, however, the plain meaning of the word is not found to be clear, resort to other aids is available.

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention “are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face.” The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof. (Id.)

the percentage of the votes that had been cast in favor of a party, organization or coalition.

X X X X

It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly. It also means that, let us say, there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly. Those are the dynamics of a party list system.

We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly. These sectors or these groups may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.

X X X X

BISHOP BACANI: Madam President, am I right in interpreting that when we speak now of party list system though we refer to sectors, we would be referring to sectoral party list rather than sectors and party list?

MR. MONSOD: **As a matter of fact, if this body accepts the party list system, we do not even have to mention sectors because the sectors would be included in the party list system. They can be sectoral parties within the party list system.**

BISHOP BACANI: Thank you very much.³⁵ (emphases and underscores supplied)

These exchanges took place on July 22, 1986. When the discussion on the party-list system of election resumed on July 25, 1986, Commissioner Monsod proposed an amendment³⁶ (that substantially became Section 5[1], Article VI of 1987 Constitution) that further clarified what this innovative system is.

³⁵ II RECORD of the Constitutional Commission, pp. 85-86.
³⁶ Id. at 252.

Thus, the words “marginalized” and “underrepresented” should be understood in the *electoral sense*,³⁷ i.e., those who cannot win in the traditional district elections and who, while they may have a national presence, lacked “well-defined political constituency” within a district sufficient for them to win. For emphasis, sectoral representation of those perceived in the narrow sectoral (including social justice) sense as “marginalized” in society is encapsulated within the broader multiparty (party-list system) envisioned by the framers.

This broader multiparty (party-list system) seeks to address *not only* the concerns of the marginalized sector (in the narrow sectoral sense) but also the concerns of those “underrepresented” (in the legislative district) as a result of the winner-take-all system prevailing in district elections – a system that ineluctably “disenfranchises” those groups or mass of people who voted for the second, third or fourth placer in the district elections and even those who are passive holders of Filipino citizenship.

RA No. 7941 itself amply supports this idea of “underrepresented” when it used a broad qualitative requirement in defining “political parties” as ideology or policy-based groups and, “sectoral parties” as those whose principal advocacy pertains to the special interest and concerns of identified sectors.

Based on these considerations, it becomes vividly clear that – contrary once again to what *Ang Bagong Bayani* holds – **proportional representation refers to the representation of different political parties, sectoral parties and organizations in the House of Representatives in proportion to the number of their national constituency or voters, consistent with the constitutional policy to allow an “open and free party system” to evolve.**

In this regard, the *second sentence of Section 2* of RA No. 7941 is itself notably anchored on the “open and free party system” mandated by Article IX-C of the Constitution. For some reason, *Ang Bagong Bayani* never noted this part of *Section 2* and its significance, and is utterly silent as well on the constitutional anchor provided by *Section 6, Article IX-C* of the Constitution. It appears to have simply and conveniently focused on the *first sentence* of the Section and its constricted view of the term “marginalized and underrepresented,” while wholly fixated on a social justice orientation. Thus, it opened its ruling, as follows:

The party-list system is a *social justice tool* designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to

³⁷ See Justice Vicente Mendoza’s Dissent in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, *supra* note 4, at 369-370.

benefit them. It 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.³⁸ (emphasis supplied)

Reliance on the concept of social justice, to be sure, involves a motherhood statement that offers little opportunity for error, yet relying on the concept *solely and exclusively* can be *misleading*. To begin with, the creation of an avenue by which “sectoral parties or organizations” can meaningfully join an electoral exercise is, in and by itself, a social justice mechanism but it served other purposes that the framers of the Constitution were addressing. Looking back, the appeal to the social justice concept to make the party-list elections an exclusive affair of the “marginalized and underrepresented sector” (as defined in *Ang Bagong Bayani*) proceeds from the premise that a multiparty-system is antithetical to sectoral representation. This was effectively the argument of the proponents of the exclusive sectoral representation view in the constitutional party-list debates; to allow political parties to join a multiparty election is a pre-determination of the sectors’ political massacre. This issue, however, has been laid to rest in the constitutional debates and should not now be revived and resurrected by coursing it through the Judiciary.

As the constitutional debates and voting show, what the framers envisioned was a multiparty system that already *includes* sectoral representation. Both sectoral representation and multiparty-system under our party-list system are concepts that comfortably fall within this vision of a Filipino-style party-list system. Thus, both the text and spirit of the Constitution do not support an interpretation of exclusive sectoral representation under the party-list system; what was provided was an avenue for the marginalized and underrepresented sectors to participate in the electoral system – it is an invitation for these sectors to join and take a chance on what democracy and republicanism can offer.

Indeed, our democracy becomes more vibrant when we allow the interaction and exchange of ideas, philosophies and interests within a broader context. By allowing the marginalized and underrepresented sectors who have the numbers, to participate together with other political parties and interest groups that we have characterized, under the simple and relatively inexpensive mechanism of party-list we have today, the framers clearly aimed to enrich principled discourse among the greater portion of the society and hoped to create a better citizenry and nation.

³⁸

412 Phil. 322 (2001).

b.1. Impact on Political Parties

To summarize the above discussions and to put them in operation, political parties are not only “not excluded” from the party-list system; they are, in fact, expressly allowed by law to participate. This participation is not impaired by any “marginalized and underrepresented” limitation understood in the *Ang Bagong Bayani* sense.

As applied to political parties, this limitation must be understood in the *electoral sense*, i.e., they are parties espousing their unique and “marginalized” principles of governance and who must operate in the party-list system because they only have a “marginal” chance of winning in the legislative district elections. This definition assumes that the political party is *not also a participant in the legislative district elections as the basic concept and purpose of the party-list innovation negate the possibility of playing in both legislative district and party-list arenas*.

Thus, parties – whether national, regional or sectoral – with legislative district election presence anywhere in the country can no longer participate as the party-list system is national in scope and no overlap between the two electoral systems can be allowed anywhere.

c. The Parties and Their Nominees

c.1. Refusal and/or Cancellation of Party Registration Due to Nominee Problems

The COMELEC’s refusal and cancellation of registration or accreditation of parties based on Section 6 of RA No. 7941 is a sore point when applied to parties based on the defects or deficiencies attributable to the nominees. On this point, I maintain the view that *essential distinctions exist between the parties and their nominees that cannot be disregarded*. As quoted in the Summary of Positions, however, the need to make a distinction between the two types of nominees is relevant only to sectoral parties and organizations.

The cancellation of registration or the refusal to register some of the petitioners on the ground that their nominees are not qualified implies that *the COMELEC viewed the nominees and their party-list groups as one and the same entity*; hence, the disqualification of the nominee necessarily results in the disqualification of his/her party.

Sadly, this interpretation *ignores* the factual and legal reality that the party-list group, not the nominee, *is* the candidate in the party-list election, and at the same time blurs the distinction between a party-list representative and a district representative.

c.2. The Party-Nominee Relationship

That the party-list group, rather than the nominee, is voted for in the elections is not a disputed point. Our essential holding, however, is that a party-list group, in order to be entitled to participate in the elections, must satisfy the following express statutory requirements:

1. must be composed of Filipino citizens **belonging to marginalized and underrepresented sectors, organizations and parties**;
2. has no well-defined political constituencies; and
3. must be capable of contributing to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.

The Constitution requires, too, that the members of the House of Representatives are those who are elected from legislative districts, and those who are elected through a party-list system (Section 5[1], Article VI) where the votes are in favor of a political party, organization or coalition (Section 6, Article IX-C).

These requirements embody the concept behind the party-list system and demonstrate that it is a system completely different from the legislative district representation. *From the point of view of the nominee, he or she is not the candidate, the party is the entity voted for.* This is in far contrast from the legislative district system where the candidate is directly voted for in a personal electoral struggle among candidates in a district. Thus, *the nominee in the party-list system is effectively merely an agent of the party.*³⁹ It is the party-list group for whom the right of suffrage⁴⁰ is exercised by the national electorate with the divined intent of casting a vote for a party-list group in order that the particular ideology, advocacy and concern represented by the group may be heard and given attention in the halls of the legislature.

This concept and its purpose negate the idea that the infirmities of the nominee that do not go into the qualifications *of the party itself* should prejudice the party. In fact, the law does not expressly provide that the disqualification of the nominee results in the disqualification of a party-list group from participating in the elections. In this regard, Section 6 of RA No. 7941 reads:

³⁹ Separate Dissenting Opinion of Justice Jose C. Vitug in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, *supra* note 4, at 354.

⁴⁰ 1987 CONSTITUTION, Article V. In *Akbayan-Youth v. COMELEC* (407 Phil. 618, 636 [2001]), the Court characterized the requirement of registration as an “indispensable precondition” to the exercise of the right of suffrage. The Court said: “Proceeding from the significance of registration as a necessary requisite to the right to vote, the State undoubtedly, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter’s registration for the ultimate purpose of conducting honest, orderly and peaceful election, to the incidental yet generally important end, that even pre-election activities could be performed by the duly constituted authorities in a realistic and orderly manner – one which is not indifferent and so far removed from the pressing order of the day and the prevalent circumstances of the times.”

Section 6. *Removal and/or Cancellation of Registration.* The COMELEC may motu proprio or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

- (1) It is a religious sect or denomination, organization or association organized for religious purposes;
- (2) It advocates violence or unlawful means to seek its goal;
- (3) It is a foreign party or organization;
- (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
- (5) It violates or fails to comply with laws, rules or regulations relating to elections;
- (6) It declares untruthful statements in its petition;
- (7) It has ceased to exist for at least one (1) year; or
- (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two percentum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. [italics supplied]

Notably, all these grounds **pertain to the party itself**. Thus, if the law were to be correctly applied, the law, rules and regulations that the party violated under Section 6(5) of RA No. 7941 must affect the party itself to warrant refusal or cancellation of registration.

To take one of the presented issues as an example, it is only after a party's failure to submit its list of five qualified candidates, after being notified of its nominees' disqualification, that refusal or cancellation of registration may be warranted. Indeed, if the party-list group inexcusably fails to comply with this simple requirement of the law (Section 8 of RA No. 7941), then its registration deserves to be denied or an existing one cancelled as this omission, by itself, demonstrates that *it cannot then be expected to "contribute to the formulation and enactment of appropriate legislation."*⁴¹

The nominee is supposed to carry out the ideals and concerns of the party-list group to which he/she belongs; to the electorate, he/she embodies the causes and ideals of the party-list group. However, unlike the political

⁴¹ See Section 2 of RA No. 7941.

parties' official candidates - who can, for whatever reason, disaffiliate from his party and run as an independent candidate - the linkage between a nominee and his party-list group is actually a ***one-way mirror relationship***. The nominee can only see (and therefore run) through the party-list group⁴² but the party-list group can see beyond the nominee-member.

While the nominee is the entity "elected" to Congress, a companion idea that cannot be glossed over is that *he only carried this out because of the nomination made by the party to which he belongs and only through the unique party-list system*. Note in this regard that the registration with the COMELEC confers personality (for purposes of election) *on the party-list group itself* – and to no other. Note, too, that what the Constitution and the law envision is *proportional representation through the group and the latter, not the nominee, is the one voted for* in the elections. Even the manner of his nomination and the duties his official relation to his party entails are matters that are primarily determined by the party's governing constitution and by-laws. To be sure, political dynamics take place within the party itself prior to or after the period of registration that transcend the nominee's status as a representative. These realities render indisputable that a party has the right (in fact, the duty) to replace a nominee who fails to keep his *bona fide* membership in the party – *i.e.*, keeping true to the causes of the party - even while the nominee is serving in Congress.

The preceding discussions show that the COMELEC's action of apparently treating the nominee and his party as one and the same is clearly and plainly unwarranted and could only proceed from its commission of grave abuse of discretion, correctible under Rule 65.

These distinctions do not discount at all the position or the role of the party-list nominee; it is from the list of nominees submitted by the party that party-list representatives are chosen should the party obtain the required number of votes. In fact, once the party-list group submits the list of its nominees, the law provides specific grounds for the change of nominees or for the alteration of their order of nomination. While the nominee may withdraw his nomination, we ruled it invalid to allow the party to withdraw the nomination it made⁴³ in order "to save the nominee from falling under the whim of the party-list organization once his name has been submitted to the COMELEC, and to spare the electorate from the capriciousness of the party-list organizations."⁴⁴

We also recognize the importance of informing the public who the nominees of the party-list groups are as these nominees *may* eventually be in

⁴² In fact, a nominee's change of party affiliation during his term results in the forfeiture of his seat in Congress (see Section 15 of RA No. 7941). If the party-list group fails to obtain a seat in Congress, the law nevertheless requires a nominee to be a *bona fide* member of the party-list group.

⁴³ *Lokin, Jr. v. Commission on Elections*, G.R. Nos. 179431-32 and 180443, June 22, 2010, 621 SCRA 385, 412.

⁴⁴ *Ibid.*

Congress.⁴⁵ For the nominees themselves, the law requires that:

1. he has given his written consent to be a nominee;
2. he must be a natural-born citizen of the Philippines;
3. he must be a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election;
4. he must be able to read and to write;
5. he must be a *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election; and
6. he must be at least twenty-five (25) years of age on the day of the election.

From this list, what clearly serves as the **legal link** between the party and its nominee is **only the latter's *bona fide* membership in the party that wishes to participate in the party-list system of election. Because of this relationship, membership is a fact that the COMELEC must be able to confirm as it is the link between the party the electorate votes for and the representation that the nominee subsequently undertakes in the House of Representatives.** To illustrate, if a sectoral party's nominee, who does not "actually share the attribute or characteristic" of the sector he seeks to represent, fails to prove that he is a genuine advocate of this sector, then the presence of bona fide membership cannot be maintained.

To automatically disqualify a party without affording it opportunity to meet the challenge on the eligibility of its nominee or to undertake rectifications deprives the party itself of the legal recognition of its own personality that registration actually seeks.

The qualifications of a nominee at the same time that it determines whether registration shall be granted.⁴⁶ When under the COMELEC's lights, the shadow cast by the party-list nominee is not truly reflective of the group he/she is supposed to represent, what the COMELEC must do is to give the party the opportunity to field in the five qualified candidates. The COMELEC acts with grave abuse of discretion when it immediately cancels or refuses the registration of a party without affording it the opportunity to comply.

In line with the idea of proportional and sectoral representation, the law provides that a nominee-representative who changes his affiliation during his term forfeits his seat. Likewise, in providing for the rule in case of vacancy for seats reserved for party-list representatives, the reason for the

⁴⁵ *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*, G.R. Nos. 177271 and 177314, May 4, 2007, 523 SCRA 1, 16-17.

⁴⁶ For party-list groups already previously registered, the COMELEC can determine the qualifications of their nominees once they file a Manifestation of Intent to participate.

vacancy is broad enough to include not only the valid causes provided for in the party's constitution and by-laws (such as the non-possession of the necessary qualifications), but likewise includes the situation where the House of Representatives Electoral Tribunal finds that the nominee-representative unqualified for failure to measure up to the necessary statutory and other legal requirements.⁴⁷ If these can be remedied without affecting the status of the party itself, no reason exists why the registration of a party-list group should automatically be cancelled or refused by reason of individual failures imputable and affecting only the nominee.

Based on these considerations and premises, the party-list group and its nominees cannot be wholly considered as one identifiable entity, with the fault attributable and affecting only the nominee, producing disastrous effects on the otherwise qualified collective merit of the party. If their identification with one another can be considered at all, it is in the ideal constitutional sense that one ought to be a reflection of the other – *i.e.*, the party-list group acts in Congress through its nominee/s and the nominee in so acting represents the causes of the party in whose behalf it is there for.

E. Observations on Chief Justice Sereno's Reflections.

Essentially, the Reflections defend the *Ang Bagong Bayani* ruling and do not need to be further discussed at this point lest this Opinion be unduly repetitious. One point, however, that needs to be answered squarely is the statement that this Separate Opinion is not “*appropriately sensitive to the context from which it [the 1987 Constitution] arose.*” The Reflections asserted that the heart of the 1987 Constitution is the Article on Social Justice,” citing, in justification, the statements endorsing the approval of the 1987 Constitution, particularly those of Commissioner Cecilia Munoz Palma, the President of the 1986 Constitutional Commission; President Munoz Palma described the Constitution as reaching out to the social justice sectors.

These cited statements, however, were endorsements of the Constitution *as a whole* and did not focus solely on the electoral reform provisions. **As must be evident in the discussions above, I have no problem in accepting the social justice thrust of the 1987 Constitution as it indeed, *on the whole*, shows special concern for social justice compared with the 1935 and the 1973 Constitution. The Reflections, however, apparently misunderstood the thrust of my Separate Opinion as already fully explained above.**

⁴⁷ See *Abayon v. House of Representatives Electoral Tribunal*, *supra* note 42; and *Lokin, Jr. v. Commission on Elections*, *supra* note 45.

This Separate Opinion simply explains that the provisions under consideration in the present case are the Constitution's electoral provisions, specifically the elections for the House of Representatives and the nation's basic electoral policies (expressed in the Article on the Commission on Elections) that the constitutional framers wanted to reform.

What the 1987 constitutional framers simply wanted, *by way of electoral reform*, was to “open up” the electoral system by giving more participation to those who could not otherwise participate under the then existing system – *those who were marginalized in the legislative district elections because they could not be elected in the past for lack of the required votes and specific constituency in the winner-take-all legislative district contest, and who, by the number of votes they garnered as 3rd or 4th placer in the district elections, showed that nationally, they had the equivalent of what the winner in the legislative district would garner*. This was the concept of “marginalized and underrepresented” and the “lack of political constituency” that came out in the constitutional deliberations and led to the present wordings of the Constitution. RA No. 7941 subsequently faithfully reflected these intents.

Despite this overriding intent, the framers recognized as well that those belonging to specifically-named sectors (i.e., the marginalized and underrepresented in the social justice sense) should be given a head-start – a “push” so to speak – in the first three (3) elections so that their representatives were simply to be selected as party-list representatives in these initial elections.

Read in this manner, the party-list system as defined in the Constitution cannot but be one that is “*primarily*” grounded on electoral reform and one that was principally driven by electoral objectives. As written, it admits of national and regional political parties (which may be based on ideology, *e.g.* the Socialist Party of the Philippines), with or without social justice orientation. At the same time, the system shows its open embrace of social justice through the preference it gave to the social justice sectors (*labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector*) in the first three elections after ratification of the Constitution, and to the *labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals*, in the RA No. 7941 definition of sectoral party.

The objection regarding the “textualist” approach has been fully discussed in the Summary of Positions and need not be repeated here.

F. The Eleven-Point Parameters for the COMELEC

I close this Opinion by outlining the eleven-point parameters that should guide the COMELEC in the exercise of its power to register parties under the party-list system of elections. For ease of application, these parameters refer back to the *Ang Bagong Bayani* guidelines, particularly on what points in these guidelines should be discarded and what remains intact and effective.

In view of our prior ruling in *BANAT v. Commission on Elections* (disqualifying political parties from participating in the party-list elections), the petitioners understandably attempted to demonstrate, in one way or another, that they represent the marginalized and underrepresented sectors, as the term is understood in *Bagong Bayani*. As discussed in this Separate Opinion, however, the requirement of being marginalized and underrepresented should be understood, not only in the narrow sectoral sense, but also in the broader electoral sense.

We likewise take note of the fact that this is the first time that the Court ever attempted to make a categorical definition and characterization of the term “marginalized and under-represented,” a phrase that, correctly understood, must primarily be interpreted in the electoral sense and, in case of sectoral parties and organizations, also partly in the special interests and social justice contexts. The COMELEC understandably has not been given parameters under the present pronouncements either in evaluating the petitions for registration filed before it, on one hand, or in determining whether existing party-list groups should be allowed to participate in the party-list elections. Hence, the need for the following parameters as we order a remand of all these consolidated petitions to the COMELEC.

1. **Purpose and Objective of Party-list System.** The primary objective and purpose of the party-list system (established under the Constitution and RA 7941 is *electoral reform* by giving marginalized and under-represented parties (*i.e. those who cannot win in the legislative district elections and in this sense are marginalized and may lack the constituency to elect themselves there, but who – nationally – may generate the following and votes equivalent to what a winner in the legislative district election would garner*), the chance to participate in the electoral exercise and to elect themselves to the House of Representatives through a system other than the legislative district elections.

At the same time, the party-list system recognizes sectoral representation through sectoral organizations (that, as defined did not require or identify any social justice characteristic but were still subject to the “marginalized and underrepresented” and the “constituency” requirements of the law), and through sectors

identified by their common “social justice” characteristics (but which must likewise comply with the “marginalized and underrepresented” and “constituency” requirements of the law).

2. **For political parties (whether national or regional):** a) to be classified as political parties, they must advocate an ideology or platform, principles and policies, for the general conduct of government. The application of the further requirement under RA No. 7941 (that as the most immediate means of securing the adoption of their principles of governance, they must regularly nominate and support their leaders and members as candidates for public office) shall depend on the particular circumstances of the party.

b) The *marginal and under-representation in the electoral sense* (i.e., in the legislative district elections) and the lack of constituency requirements fully apply to political parties, but there is no reason not to presume compliance with these requirements *if political parties are not participants in any legislative district elections*.

c) ***Role of Major Political Parties in Party-list Elections.*** Major political parties, if they participate in the legislative district elections, cannot participate in the party-list elections, nor can they form a coalition with party-list parties and run as a coalition in the party-list elections.

A coalition is a formal party participant in the party-list system; what the party-list system forbids directly (i.e., participation in both electoral arenas), the major political parties cannot do indirectly through a coalition.

No prohibition, however, exists against *informal alliances* that they can form with party-list parties, organizations or groups running for the party-list elections. The party-list component of these informal alliances is not prohibited from running in the party-list elections.

The plain requirements intrinsic to the nature of the political party evidently **render the first and second Ang Bagong Bayani guideline invalid, and significantly affects the fourth guideline.** To stress, political parties are not only “not excluded” from the party-list system; they are, in fact, expressly allowed by law to participate without being limited by the “marginalized and underrepresented” requirement, as narrowly understood in *Ang Bagong Bayani*

3. **Sectoral parties, groups and organizations** must belong to the sectors enumerated in Section 5(2), Article VI of the 1987 Constitution and Section 5 of RA No. 7941 that are mainly based on social justice characteristics; or must have interests, concerns or characteristics specific to their sectors although they do not require or need to identify with any social justice characteristic.

In either case, they are subject to the “marginalized and under-represented” and the “constituency” requirements of the law through a showing, supported by evidence, that they belong to a sector that is actually characterized as marginal and under-represented.

Sectoral parties, groups and organizations are additionally subject to the general overriding requirement of **electoral marginalization and under-representation** and **the constituency requirements** of the law, but there is no reason why compliance with these requirements cannot be presumed if they are not participants in any legislative district elections.

4. **Registration with the COMELEC.**

Political parties (whether national or regional, already registered with the COMELEC as regular political parties but not under the party-list system) must register under the party-list system to participate in the party-list elections. For party-list registration purposes, they must submit to the COMELEC their constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information that the COMELEC may require.⁴⁸

Similarly, **sectoral parties, groups or organizations** already registered under the general COMELEC rules for registration of political parties (but not under the party-list system), must register under the party-list system to be eligible to participate in the party-list elections, and must likewise submit relevant documentation that the COMELEC shall require.

Political and sectoral parties, groups or organizations already previously registered and/or accredited under the party-list system, shall maintain their previous registration and/or accreditation and shall be allowed to participate in the party-list elections unless there are grounds for cancellation of their registration and/or accreditation under Section 6, RA 7941.

⁴⁸

RA No. 7941, Section 5.

5. **Submission of Relevant Documents.** The statutory requirement on the submission of relevant documentary evidence to the COMELEC is not an empty and formal ceremony. The **eighth (8th) Ang Bagong Bayani guideline** relating to the ability of the party-list group (not just the nominee but directly through the nominee or indirectly through the group) to contribute to the formulation and enactment of appropriate legislation that will benefit the nation remains wholly relevant and should be complied with through the required submissions the COMELEC shall require.

The platform or program of government, among others, is very important considering the significant role the party-list group itself, as a collective body, plays in the party-list system dynamics even as its nominee or nominees is the one who is considered “Member” of the House of Representatives. The statutory recognition of an “appropriate legislation” beneficial to the nation injects the meaningful democracy that the party-list system seeks to add stimulus into.

6. **Party Disqualification.** Political parties and sectoral parties and organizations alike must not possess any of the disqualifying grounds under Section 6, RA 7941 to be able to participate in the party-list elections.

Insofar as the **third Ang Bagong Bayani** guideline merely reiterates the first ground for cancellation or refusal of registration under Section 6, RA 7941 – that the party-list group is a religious sect or denomination, organization or association, organized for religious purpose – and the same ground is **retained under these parameters.**

7. **Compliance with Substantive Requirements.** To justify their existence, all party-list groups must comply with the substantive requirements of the law specific to their own group, their own internal rules on membership, and with the COMELEC’s Rules of Procedure.
8. **Prohibited Assistance from Government.** The party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by the government. It must be independent of the government. This is the **fifth Ang Bagong Bayani guideline.** While this requirement only contemplated of the marginalized and underrepresented sector in the narrow sense in *Ang Bagong Bayani*, no reason exists not to extend this requirement even to political parties participating in the party-list elections.

To emphasize, the general overriding requirement in the party-list elections is *inability to participate in the legislative district elections with a fair chance of winning*. If a political party at the very least obtains the assistance of the government, whether financially or otherwise, then its participation in the party-list system defeats the broad electoral sense in which the term “marginalized” and “underrepresented” is understood as applied to political parties.

9. **Qualification of Party-list Nominee.** The *sixth Ang Bagong Bayani guideline*, being a mere faithful reiteration of Section 9 of RA 7941 (qualification of a party-list nominee), should remain. In addition, the party-list nominee must comply with the proviso in Section 15 of RA 7941.
10. **Party and Nominee Membership.** For sectoral parties and organizations, the *seventh Ang Bagong Bayani guideline* – i.e., that the nominees must also represent the marginalized and underrepresented sectors – refers not only to the actual possession of the marginalized and underrepresented status represented by the sectoral party or organization but also to one who genuinely advocates the interest or concern of the marginalized and underrepresented sector represented by the sectoral party or organization.

To be consistent with the *sectoral representation* envisioned by the framers, *majority of the members* of the sectoral party or organization must *actually* belong to the sector represented.

For political parties, it is enough that their nominees are bona fide member of the group they represent.

11. **Effects of Disqualification of Nominee.** The disqualification of a nominee (on the ground that he is not a *bona fide* member of the political party; or that he does not possess the actual status or characteristic or that he is not a genuine advocate of the sector represented) does not automatically result in the disqualification of the party since all the grounds for cancellation or refusal of registration pertain to the party itself.

The party-list group should be given opportunity either to refute the finding of disqualification of its nominee or to fill in a qualified nominee before cancellation or refusal of registration is ordered. Consistent with Section 6 (5) and Section 8 of RA 7941, the party-list group must submit a list containing at least five nominees to the COMELEC. If a party-list group endeavors to participate in the party-list elections on the theoretical assumption that it has a national constituency (as against district constituency),

then compliance with the clear requirement of the law on the number of nominees must all the more be strictly complied with by the party-list group.

Considering that the thirteen petitioners, who are new applicants, only secured a *Status Quo Ante* Order (instead of mandatory injunction that would secure their inclusion in the ballots now being printed by the COMELEC), the remand of their petitions is only for the academic purpose of determining their entitlement to registration under the party-list system but not anymore for the purpose of participating in the 2013 elections.

Any of the remaining party-list groups involved in the remaining 40 petitions⁴⁹ that obtain the number of votes required to obtain a seat in the House of Representatives would still be subject to the determination by the COMELEC of their qualifications based on the parameters and rationale expressed in this Separate Opinion.


ARTURO D. BRION
Associate Justice

⁴⁹ The petitioners in GR Nos. 204421 and 204425 refer to one and the same party-list group, only that they are represented by different personalities, claiming to be the legitimate officers of the party.