

**EN BANC**

**G.R. No. 203766 (ATONG PAGLAUM v COMELEC);** G.R. 203818-19 (AKB); G.R. 203922 (APEC); G.R. 203936 (AKSYON MAGSASAKA); G.R. 203958 (KAKUSA); G.R. 203960 (1-CARE); G.R. 203976 (ARARO); G.R. 203981 (ARAL); G.R. 204002 (ALLIANCE FOR RURAL CONCERNS); G.R. 204094 (ANAD); G.R. 204100 (1BRO-PGBI); G.R. 204122 (1GANAP/GUARDIANS); G.R. 204125 (A-IPRA); G.R. 204126 (AKO AGILA); G.R. 204139 (ALAM); G.R. 204141 (BANTAY); G.R. 204158 (ABROAD PARTY LIST); G.R. 204174 (AANGAT TAYO PARTY LIST); G.R. 204216 (COCOFED); G.R. 204220 (ABANG LINGKOD); G.R. 204236 (FIRM 24-K); G.R. 204239 (ABP); G.R. 204239 (GREENFORCE); G.R. 204240 (AGRI); G.R. 204263 (A BLESSED PARTY LIST); G.R. 204318 (UNIMAD); G.R. 204321 (AANI); G.R. 204323 (BAYANI PARTYLIST); G.R. 204341 (ALIM); G.R. 204356 (BUTIL); G.R. 204358 (AAMA); G.R. 204359 (SMART); G.R. 204364 (AKO BAHAY); G.R. 204367 (AKIN); G.R. 204370 (AAB); G.R. 204374 (BINHI); G.R. 204379 (ASIN); G.R. 204394 (GUARDJAN); G.R. 204402 (KALIKASAN PARTY LIST); G.R. 204408 (PACYAW); G.R. 204410 (1-UTAK); G.R. 204421 (SENIOR CITIZEN); G.R. 204425 (COALITION OF SENIOR CITIZENS); G.R. 204426 (ALA-EH); G.R. 204428 (AG); G.R. 204435 (1AAAP); G.R. 204436 (AI); G.R. 204455 (MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION); G.R. 204484 (PBB); G.R. 204485 (ALONA); G.R. 204486 (1ST KABAGIS)

Promulgated:

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**CONCURRING AND DISSENTING OPINION**

**LEONEN, J.:**

I agree with the ponencia in substance, but dissent in so far as there is no finding of grave abuse of discretion on the part of the COMELEC.

National political parties may participate in party list elections, provided that they have no candidate for legislative districts. The constitution disqualifies political parties, which have candidates for legislative districts, from the party list system.<sup>1</sup> I also agree that they need not be organized sectorally and/or represent the “marginalized and underrepresented”.

<sup>1</sup> CONSTITUTION, Art. VI, Sec. 5, par. (1).

We take this opportunity to take a harder look at article VI section 5(1) and (2) in the light of article II section 1 of the Constitution. We now benefit from hindsight as we are all witness to the aftermath of the doctrines enunciated in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*<sup>2</sup> as qualified by *Veterans Federation Party v COMELEC*<sup>3</sup> and *Barangay Association for National Advancement and Transparency v COMELEC*<sup>4</sup>.

In my view, the Constitutional provisions have always created space for “national, regional and sectoral parties and organizations” to join the party list system. It is textually clear that national political parties or regional organizations do not need to be organized on sectoral lines. Sectoral parties or organizations belong to a different category of participants in the party list system.

Moreover, there is no constitutional requirement that all those who participate in the party list system “must represent the marginalized and underrepresented groups” as mentioned in Republic Act No. 7941<sup>5</sup>. This law is unconstitutional in so far as it makes a requirement that is not supported by the plain text of the Constitution.

There is also a constitutional difference between the political parties that support those who are candidates for legislative districts and those that participate in the party list system. It is inconsistent for national political parties who have candidates for legislative districts to also run for party list. This, too, is the clear implication from the text of article VI, section 5(1) of the Constitution.

The insistence on the criteria of “marginalized and underrepresented”<sup>6</sup> has caused so much chaos to the point of absurdity in our party list system. It

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<sup>2</sup> G.R. No. 147589, June 26, 2001, 359 SCRA 698.

<sup>3</sup> G.R. No. 136781, October 6, 2000, 342 SCRA 244.

<sup>4</sup> G.R. No. 179271, April 21, 2009. 586 SCRA 211. But, by a vote of 8 joining the opinion of Puno, C.J. the court upheld Veterans disallowing political parties from participating in the party list elections.

<sup>5</sup> Republic Act. No. 7941 (1995).

<sup>6</sup> *Supra* note 2, *see* first, second and sixth and seventh requirements:

“First, the political party, sector, organization or coalitions 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, by laws, 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 ...

“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...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...”

is too ambiguous so as to invite invidious intervention on the part of COMELEC, endangering the fundamental rights to suffrage of our people. Hewing more closely with the text of the Constitution makes more sense under the present circumstances.

Besides, there was no clear majority in support of the ratio decidendi relevant to our present cases in the case of *Ang Bagong Bayani et al. v. COMELEC*<sup>7</sup> and *BANAT v. COMELEC*<sup>8</sup>.

I vote for the grant of the Petitions and the nullification of COMELEC Resolution No. 9513, s. August 2, 2012. This will have the effect of reinstating the registration of thirty nine (39) existing party list groups that have already registered for the 2010 elections especially those that have won seats in the current Congress. This will also automatically remand the thirteen (13) cases of new party list registrants for proper processing and evaluation by the Commission on Elections.

### **Textual analysis of the relevant provisions**

#### *Different kind of political party in the party list system*

The core principle that defines the relationship between our government and those that it governs is captured in the constitutional phrase that ours is a "democratic and republican state".<sup>9</sup> A democratic and republican state is founded on effective representation. It is also founded on the idea that it is the electorate's choices that must be given full consideration.<sup>10</sup> We must always be sensitive in our crafting of doctrines lest the guardians of our electoral system be empowered to silence those who wish to offer their representation. We cannot replace the needed experience of our people to mature as citizens in our electorate.

We should read article VI, section 5 (1) and (2) in the light of these overarching consideration.

Article VI, section 5(1) provides:

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"Sixth, the party or organization must not only comply with the requirements of the law; its nominees must likewise do so ..."

"Seventh, not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees..."

<sup>7</sup> *Supra* note 2.

<sup>8</sup> *Supra* note 4; *Infra* note 29.

<sup>9</sup> CONSTITUTION, Art. II, Sec. 1.

<sup>10</sup> *See Moya v. Del Fiero*, G.R. No. L-46863, November 18, 1939,

“(1) The House of Representative 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 those who, as provided by law, shall be elected through a party list system of registered national, regional and sectoral parties or organizations.***” (emphasis provided)

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

The differences in terms of representation are clear.

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

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

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

The political party that affiliates those who participate in elections in legislative districts organize primarily to have their candidates win. These political parties have avowed principles and platforms of government.<sup>11</sup> But, they will be known more through the personalities and popularity of their candidates.<sup>12</sup> Often, compromises occur in the political party's philosophies in order to accommodate a viable candidate.

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

The party list system is an attempt to introduce a new system of politics in our country, one where voters choose platforms and principles primarily and candidate-nominees secondarily. As provided in the Constitution, the party list system's intentions are broader than simply to "ensure that those who are marginalized and represented become lawmakers themselves".<sup>13</sup>

Historically, our electoral exercises privileged the popular and, perhaps, pedigreed individual candidate over platforms and political programs.<sup>14</sup> Political parties were convenient amalgamation of electoral candidates from the national to the local level that gravitated towards a few of its leaders who could marshal the resources to supplement the electoral campaigns of their members.<sup>15</sup> Most elections were choices between competing personalities often with very little discernible differences in their interpretation and solutions for contemporary issues.<sup>16</sup> The electorate chose on the bases of personality and popularity; only after the candidates were elected to public offices will they later find out the concrete political programs that the candidate will execute. Our history is replete with instances where the programs that were executed lacked cohesion on the basis of principle.<sup>17</sup> In a sense, our electoral politics alienated and marginalized large parts of our population.

The party list system was introduced to challenge the status quo. It could not have been intended to enhance and further entrench the same system. It is the party or the organization that is elected. It is the party list group that authorizes, hopefully through a democratic process, a priority list of its nominees. It is also the party list group that can delist or remove their nominees, and hence replace him or her, should he or she act inconsistently

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<sup>11</sup> See for instance, Lande, Carl H., Parties and Politics in the Philippines, Asian Survey, Vol. 8, No. 9 (Sep 1968) pp 725-747 or Teehankee, Julio, Electoral Politics in the Philippines, in Electoral Politics in Southeast Asia, Aurel Croissant, ed., Friedrich Ebert Stiftung, 2002.

<sup>12</sup> Id.; Lo, Barnaby, Fame, Family Dominate Key Philippines Election, CBS News, May 10, 2010, <[http://www.cbsnews.com/8301-503543\\_162-20004523-503543.html](http://www.cbsnews.com/8301-503543_162-20004523-503543.html)> (visited March 7, 2013).

<sup>13</sup> See CONSTITUTION, Art. IX(C), Sec. 6.

<sup>14</sup> *Supra* note 11.

<sup>15</sup> Id.

<sup>16</sup> *Supra* note 12.

<sup>17</sup> *Supra* note 11.

with the avowed principles and platforms of governance of their organization. In short, the party list system assists genuine political parties to evolve. Genuine political parties enable true representation, and hence, provide the potential for us to realize a “democratic and republican state”.

Today, we are witness to the possibility of some party list groups that have maintained organizational integrity to pose candidates for higher offices, *i.e.* the Senate. We can take judicial notice that two of the candidates for the 2013 senatorial elections--who used to represent party list groups in the House of Representatives--do not have the resources nor the pedigree and, therefore, are not of the same mould as many of the usual politicians who vie for that position. It is no accident that the party list system is only confined to the House of Representatives. It is the nurturing ground to mature genuine political parties and give them the experience and the ability to build constituencies for other elective public offices.

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

Thus, it is not only “for the marginalized and underrepresented in our midst... who wallow in poverty, destitution and infirmity”<sup>18</sup> that the party list system was enacted. Rather, it was for everyone in so far as attempting a reform in our politics.

But, based on our recent experiences, requiring “national, regional and sectoral parties and organizations” that participate in the party list system to be representatives of the “marginalized and underrepresented sector” and be “marginalized and underrepresented themselves” is to engage in an ambiguous and dangerous fiction that undermines the possibility for vibrant party politics in our country. This requirement, in fact, was the very requirement that “gut the substance of the party list system”.<sup>19</sup>

Worse, contrary to the text of the constitution, it fails to appreciate the true context of the party list system.

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<sup>18</sup> *Supra* note 2.

<sup>19</sup> *See Supra* note 2. (This was the ostensible justification for not allowing all “national, regional and sectoral parties and organizations” as provided in the Constitution to participate).

*No requirement that the party or organization be “marginalized and underrepresented”*

The disqualification of two “green” or ecological parties<sup>20</sup> and two “right wing” ideological groups<sup>21</sup> (currently part of the party list sector in the present Congress) is based on the assessment of the COMELEC en banc that they do not represent a “marginalized” sector and that the nominee themselves do not appear to be marginalized.

It is inconceivable that the party list system framed in our Constitution make it impossible to accommodate green or ecological parties of various political persuasions.

Environmental causes do not have as their constituency only those who are marginalized or underrepresented. Neither do they only have for their constituency those “who wallow in poverty, destitution and infirmity”.<sup>22</sup> In truth, all of us, regardless of economic class, are constituents of ecological advocacies.

Also, political parties organized along ideological lines--the socialist or even right wing political parties--are groups motivated by a their own narratives of our history, a vision of what society can be and how it can get there. There is no limit to the economic class that can be gripped by the cogency of their philosophies and the resulting political platforms. Allowing them space in the House of Representatives if they have the constituency that can win them a seat will enrich the deliberations in that legislative chamber. Having them voice out opinions--whether true or false--should make the choices of our representatives richer. It will make the choices of our representatives more democratic.

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

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

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<sup>20</sup> GREENFORCE in G.R. No. 204239 and KALIKASAN in G.R. No. 204402.

<sup>21</sup> ANAD in G.R. No. 204094 and BANTAY in G.R. No. 204141.

<sup>22</sup> *Supra* notes 2 & 4.

Highlighting these groups in this opinion should not be mistaken as an endorsement of their platforms. Rather, it should be seen as clear examples where interests and advocacies, which may not be within the main focus of those who represent legislative districts, cry out for representation. Surely, it should be the electorate, not the COMELEC, which should decide whether their groups should participate in our legislative deliberations. That these groups could be excluded even before the vote is not what the party list system is all about.

These two instances arising from the consolidated petitions we are considering clearly show why the text of article VI, section 5 (2) provides:

“(2) The party-list representative 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 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 sectors.*” (emphasis provided)

What is plain from a reading of the text is that the qualification as to reserved seats is applicable only for the “three consecutive terms after the ratification” of the Constitution. Only one-half of the seats within that period is reserved to the “sectors” that were enumerated, *clearly implying that there are other kinds of party list groups other than those who are sectoral.*

To require that all the seats for party list representatives remain sectoral in one form or the other is clearly and patently unconstitutional. It is not supported by the text. Its rationale and its actual effect is not in accord with the spirit of these provisions.

### *Revisiting Ang Bagong Bayani et al v COMELEC*

We are aware of the case of *Ang Bagong Bayani v Comelec*.<sup>23</sup> In that case, the Court *en banc* declared that political parties may participate in the party list system but that these political parties must be organized sectorally to represent the “marginalized and underrepresented”.

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<sup>23</sup> *Supra* note 2.



The reasoning of the ponencia of that case derived from his fundamental principle that:

“...The requisite character of these parties or organizations must be consistent with the purpose of the party list system, as laid down in the Constitution and RA 7941.”<sup>24</sup>

The ponencia then proceeded *to put the interpretation of a statute at par with the text of article VI, section 5 (1) and (2) the Constitution*, thus:

“The foregoing provision on the party list system is not self-executory. It is, in fact, interspersed with phrases like ‘in accordance with law’ or ‘as may be provided by law’; it was thus up to Congress to sculpt in granite the lofty objective of the Constitution.”<sup>25</sup>

The 1987 Constitution is a complete document. Every provision should be read in the context of all the other provisions so that contours of constitutional policy are made clear.<sup>26</sup> To claim that the framers of the Constitution left it to Congress to complete the very framework of the party list system is to question the fundamental character of our constitution. The phrases “in accordance with law” and “as may be provided by law” is not an invitation to the members of Congress to continue the work of the constituent assembly that crafted the Constitution. Constitutional policy is to be derived from the text of the constitution in the light of its context in the document and considering the contemporary impact of relevant precedents.

From constitutional policy, Congress then details the workings of the policy through law. The Constitution remains the fundamental and basic law with a more dominant interpretative position *vis-a-vis* statute. It has no equal within our normative system.

Article VI, sections 5 (1) and (2) already imply a complete Constitutional framework for the party list system.

Congress cannot add the concept of “proportional representation”. Congress cannot pass a law so that we read in the text of the Constitution the requirement that *even national and regional parties or organizations should likewise be sectoral. Certainly Congress cannot pass a law so that*

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<sup>24</sup> Id., 359 SCRA 698, 717

<sup>25</sup> Id., 359 SCRA 698, 718

<sup>26</sup> *Chavez v. JBC*, G.R. No. 202242, July 17, 2012.

*even the one-half that was not reserved for sectoral representatives even during the first three consecutive terms after the ratification of the Constitution should now only be composed of sectoral representatives.*

There were strong cogent dissenting opinions coming from Justices Mendoza and Vitug when *Ang Bagong Bayani v. COMELEC* was decided in 2001.<sup>27</sup> Only six (6) justices concurred with the reasoning of the ponencia. Two justices voted only in the result. Five (5) justices dissented. Four (4) of them joining the dissenting opinion of Justice Vicente Mendoza. There was no majority therefore in upholding the reasoning and ratio decidendi proposed by the ponencia in that case. It was a divided court, one where there was a majority to sustain the result but not enough to establish doctrine.

It was even a more divided court when the same issues were tackled in the case of *BANAT v. COMELEC* in 2009.<sup>28</sup>

Ostensibly, the rationale of the majority in *BANAT* was to prevent major political parties from dominating organizations of the marginalized. Citing the concurring and dissenting opinion of then Chief Justice Puno:

“...There is no gainsaying the fact that the party-list parties are no match to our traditional political parties in the political arena. This is borne out in the party list elections held in 2001 where major political parties were initially allowed to campaign and be voted for. The results confirmed the fear expressed by some commissioners in the Constitutional Commission that major political parties would figure in the disproportionate distribution of votes: of the 162 parties which participated, the seven major political parties made it to the top 50.”<sup>29</sup>

The premise of course was the argument that major political parties that support candidates for legislative districts were to be allowed to participate in the party-list system. This is not the reading proposed today of the Constitution. Furthermore, the opinion failed to foresee that even parties

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<sup>27</sup> See *supra* note 2 at 733-761.

<sup>28</sup> See *supra* note 4. (Voting to disallow major political parties from participating directly or indirectly in the party list system were eight justices, namely: Puno, Quisumbing Ynares-Santiago, Austria-Martinez, Corona, Chico-Nazario, Velasco, and Leonardo-de Castro. Voting to allow major political parties in the party list system were seven justices, namely: Carpio, Carpio Morales, Tinga, Nachura, Brion, Peralta, and Bersamin).

<sup>29</sup> *Id.*, per Puno Concurring and Dissenting opinion at 258-259.

and organizations that claim to represent the “marginalized” could crowd out each other further weakening the system.

Not only do we vote today without a precedent having a clear vote, we also do so with the benefit of hindsight.

*“Marginalized and underrepresented” is ambiguous*

There is another reason why we cannot fully subscribe to the concept of “marginalized and underrepresented”. It is too ambiguous. There can be no consistent judicially discernible standard for the COMELEC to apply. It thus invites invidious intervention from COMELEC to undermine the right of suffrage of the groups that want to vie for representation. Indirectly, it also violates the right of suffrage of the electorate. COMELEC substituted its judgment for that of the electorate. It thus acted arbitrarily and beyond its jurisdiction.

In none of the Orders of the COMELEC in question was there a definition of what it is to be socially marginalized. No empirical studies have informed COMELEC’s determination as to which groups are “underrepresented” in government. In fact, there is no indication as to what the characteristics of an individual’s or group’s identity would lead the COMELEC *en banc* to consider that they were a “sector”.

To the COMELEC *en banc*, for instance, the following are not marginalized or underrepresented sectors: “Bicolanos”,<sup>30</sup> “young professionals like drug counselors and lecturers”,<sup>31</sup> rural energy consumers,<sup>32</sup> “peasants, urban poor, workers and nationalistic individuals who have stakes in promoting security of the country against insurgency criminality and their roots in economic poverty”,<sup>33</sup> “persons imprisoned without proof of guilt beyond reasonable doubt”,<sup>34</sup> those who advocate “to publicly oppose, denounce and counter, communism in all its form in the Filipino society”,<sup>35</sup> “environmental enthusiasts intending to take care of, protect and save Mother Earth”,<sup>36</sup> “agricultural and cooperative sectors”,<sup>37</sup> “businessmen, civil society groups, politicians and ordinary citizens advocating genuine people empowerment, social justice, and environmental

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<sup>30</sup> COMELEC Resolution dated October 20, 2012, SPP No. 12-154 (PLM) and SPP No. 12-177 (PLM), G.R. No. 203818 (Ako Bikol Political Party, AKB).

<sup>31</sup> COMELEC Omnibus Resolution dated October 11, 2012, SPP 12-220 (PLM), G.R. No. 203981 (UNIMAD).

<sup>32</sup> COMELEC Resolution dated October 16, 2012, SPP 12-260 (PLM), G.R. No. 203960 (1-CARE).

<sup>33</sup> COMELEC Resolution dated October 24, 2012, SPP 12-229 (PLM), G.R. No. 203958 (BANTAY).

<sup>34</sup> COMELEC Resolution dated October 24, 2012, SPP 12-015 (PLM), G.R. No. 203958 (KAKUSA).

<sup>35</sup> COMELEC Resolution dated November 7, 2012, SPP 12-185 (PLM), G.R. No. 204094 (ANAD)

<sup>36</sup> COMELEC Resolution dated November 7, 2012, SPP 12-060 (PLM), G.R. No. 204239 (GREENFORCE)

<sup>37</sup> COMELEC Resolution dated November 28, 2012, SPP 12-136 (PLM), G.R. No. 204356 (BUTIL)

protection and utilization for sustainable development”;<sup>38</sup> “artists”;<sup>39</sup> “Bisayans”;<sup>40</sup> Ilonggos.<sup>41</sup>

What is plain is that the COMELEC declared *ex cathedra* sans any standard what were the “marginalized and underrepresented sectors.” This, in my opinion, constitutes grave abuse of discretion on the part of the COMELEC. We are now asked to confirm their actions. We are asked to affirm that COMELEC knew what a “marginalized and underrepresented sector” was when they saw one.

COMELEC’s process was a modern day inquisition reminiscent of the medieval hunt for heretics and witches, a spectacle which may in a few cases weed out the sham organization. But it was a spectacle nonetheless fraught with too many vulnerabilities that cannot be constitutionally valid. It constitutes grave abuse of discretion.

As guardians of the text and values congealed in our Constitution, we should not lend our imprimatur to both the basis and the procedure deployed by COMELEC in this case.

After all, we have a due process clause still in place.<sup>42</sup> Regardless of the nature of the power that COMELEC deployed--whether it was administrative or quasi-judicial--the parties were entitled to have a standard that they could apply in their situation so that they could properly discern whether their factual situation deserved registration or disqualification.

Neither was it possible for COMELEC to come up with a standard. Even Rep. Act No. 7941 was ambiguously worded.<sup>43</sup> There was no workable definition of “marginalized”, “underrepresented” and “sector.”<sup>44</sup>

Neither would it have been possible for Congress to define these concepts. In the first place, our decisions have not given them guidance. In the second place, we could not give guidance because it is not in the Constitution and could not be derived from its provisions. This is also apart from the reality that “identity”, “sector”, “marginalized” and “underrepresented” are heavily contested concepts in the fields of social science and philosophy.<sup>45</sup>

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<sup>38</sup> COMELEC Resolution dated December 5, 2012, SPP 11-002, G.R. No. 204484 (PBB)

<sup>39</sup> COMELEC Resolution dated November 23, 2012, SPP 12-099, G.R. No. 204379 (ASIN)

<sup>40</sup> COMELEC Resolution dated November 29, 2012, SPP 12-011 (PP), G.R. No. 204370 (AAB)

<sup>41</sup> COMELEC Resolution dated December 4, 2012, SPP 12-009 (PP), G.R. No. 204379 (AI)

<sup>42</sup> *See* CONSTITUTION, Art. III, Sec. 1.

<sup>43</sup> *See* Republic Act No. 7941 (1995), Sec. 2-3.

<sup>44</sup> *See* Republic Act No. 7941 (1995), Sec. 3.

<sup>45</sup> *See for instance*, Iris Marion Young, *Justice and the Politics of Difference*, (2011).

*The fallacy of representation by “marginalized and underrepresented” groups*

It is possible under our system for a party list group representing indigenous peoples to be elected by peoples who do not belong to their sector but from a vote-rich legislative district. The same is true with a party list group allegedly of security guards.<sup>46</sup> They, too, can get elected without the consent of majority of all the security guards in this country but simply from the required number allowed by our formula in *BANAT v COMELEC*.<sup>47</sup> In practice, we have seen the possibility for these “marginalized and underrepresented” party list groups being elected simply by the required vote in some legislative districts.

This sham produces the failure in representation. It undermines the spirit of the party list system, violates the principle of representation inherent in a democratic and republican state, and weakens--rather than strengthen--the abilities of the “marginalized and underrepresented” to become lawmakers themselves. Constitutional construction cannot lose sight of how doctrines can cause realities that will undermine the very spirit of the text of our Constitution.<sup>48</sup>

Allowing the existence of strong national and regional parties or organizations in the party list system have better chances of representing the voices of the “marginalized and underrepresented. It will also allow views, standpoints and ideologies sidelined by the pragmatic politics required for political parties participating in legislative districts to be represented in the House of Representatives. It will also encourage the concept of being multi-sectoral and therefore the strengthening of political platforms.

To allow this to happen only requires that we maintain full fealty to the textual content of our Constitution. It is “a party-list system of registered national, regional, and sectoral parties or organizations.”<sup>49</sup> Nothing more, nothing less.

*Requirements for Party List Groups*

Preferably, party list groups should represent the marginalized and underrepresented in our society. Preferably, they may not be marginalized

<sup>46</sup> ANG GALING PINOY (AG) in G.R. No. 204428.

<sup>47</sup> *Supra* note 4.

<sup>48</sup> *See for instance Association of Small Landowners v. DAR*, G.R. No. 78742, July 14, 1989 [per Cruz J.] on allowing payment of just compensation in cash and bonds: “...We do not mind admitting that a certain degree of pragmatism has influenced our decision on this issue, but after all this Court is not a cloistered institution removed from the realities and demands of society or oblivious to the need for its enhancement.”

<sup>49</sup> CONSTITUTION, Art. VI, Sec. 5, par. 1.

themselves but that they may also subscribe to political platforms that have the improvement of those who are politically marginalized and economically destitute as their catapulting passion. But, this cannot be the constitutional requirements that will guide legislation and actions on the part of the Commission on Election.

I propose instead the following benchmarks:

First, the party list system includes national, regional and sectoral parties and organizations;

Second, there is no need to show that they represent the “marginalized and underrepresented”. However, they will have to clearly show how their plans will impact on the “marginalized and underrepresented”. Should the party list group prefer to represent a sector, then our rulings in *Ang Bagong Bayani*<sup>50</sup> and *BANAT*<sup>51</sup> will apply to them;

Third, the parties or organizations that participate in the party list system must not also be a participant in the election of representatives for the legislative districts. In other words, political parties that field candidates for legislative districts cannot also participate in the party list system;

Fourth, the parties or organizations must have political platforms guided by a vision of society, an understanding of history, a statement of their philosophies and how this translates into realistic political platforms;

Fifth, the parties or organizations--not only the nominees--must have concrete and verifiable track record of political participation showing their translation of their political platforms into action;

Sixth, the parties or organizations that apply for registration must be organized solely for the purpose of participating in electoral exercises;

Seventh, they must have existed for a considerable period, such as three (3) years, prior to their registration. Within that period they should be able to show concrete activities that are in line with their political platforms;

Eighth, they must have such numbers in their actual active membership roster so as to be able to mount a credible campaign for purpose of enticing their audience (national, regional or sectoral) for their election;

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<sup>50</sup> *Supra* note 2.

<sup>51</sup> *Supra* note 4.

Ninth, a substantial number of these members must have participated in the political activities of the organization;

Tenth, the party list group must have a governing structure that is not only democratically elected but also one which is not dominated by the nominees themselves;

Eleventh, the nominees of the political party must be selected through a transparent and democratic process;

Twelfth, the source of the funding and other resources used by the party or organization must be clear and should not point to a few dominant contributors specifically of individuals with families that are or have participated in the elections for representatives of legislative districts;

Thirteenth, the political party or party list organization must be able to win within the two elections subsequent to their registration;

Fourteenth, they must not espouse violence; and

Fifteenth, the party list group is not a religious organization.

*Disqualification of existing registered party list groups  
Jurisdiction of the COMELEC*

With respect to existing registered party list groups, jurisdiction to disqualify is clearly reposed on the House of Representatives Electoral Tribunal (HRET). The Constitution in article VI, section 17 clearly provides:

“Sec. 17. The Senate and the House of Representatives shall each have a Electoral Tribunal which ***shall be the sole judge*** of all contests relating to the election, returns, and ***qualifications of their respective Members...***”

A more specific provision in the Constitution with respect to disqualifying registered political party list groups should prevail over the more general powers of the COMELEC to enforce and administer election laws. Besides, that the HRET is the “sole judge” clearly shows that the constitutional intention is to exclude all the rest.<sup>52</sup>

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<sup>52</sup> See *Angara v. Electoral Commission*, G.R. No. L-45081, July 15, 1936.

WHEREFORE, in view of the foregoing, I vote to:

(1) **GRANT** the Petitions and **NULLIFY** COMELEC Resolution No. 9135 and all the COMELEC Resolutions raised in these consolidated cases; and

(2) **REMAND** the cases to COMELEC for proper proceedings in line with our decision.



MARVIC MARIO VICTOR F. LEONEN  
Associate Justice