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G.R. No. 203766, 203818-19, 203922, 203936, 203958, 203960, 203976, 203981, 204002, 204094, 204100, 204122, 204125, 204126, 204139, 204141, 204153, 204158, 204174, 204216, 204220, 204236, 204238, 204239, 204240, 204263, 204318, 204321, 204323, 204341, 204356, 204358, 204359, 204364, 204367, 204370, 204374, 204379, 204394, 204402, 204408, 204410, 204421, 204425, 204426, 204428, 204435, 204436, 204455, 204484, 204485 and 204490 – ATONG PAGLAUM, INC., represented by its President, MR. ALAIN IGOT, *Petitioner,* v. COMMISSION ON ELECTIONS, *Respondent;* and other related cases.

Promulgated:

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CONCURRING AND DISSENTING OPINION

SERENO, *C.J.*:

The party-list system is primarily a tool for social justice.

I believe that the *ponencia* may have further marginalized the already marginalized and underrepresented of this country. In the guise of political plurality, it allows national and regional parties or organizations to invade what is and should be constitutionally and statutorily protected space. What the *ponencia* fails to appreciate is that the party-list system under the 1987 Constitution and the party-list law or RA 7941 is not about mere political plurality, but plurality with a heart for the poor and disadvantaged.

The creation of a party-list system under the 1987 Constitution and RA 7941 was not done in a vacuum. It comprehends the reality of a Filipino nation that has been and still is struggling to come to terms with much social injustice that has been perpetrated over centuries against a majority of its people by foreign invaders and even by its own governments.

This injustice is the fertile ground for the seeds which, watered by the blood spilled during the Martial Law years, ripened to the revolution of 1986. It is from this ferment that the 1987 Constitution was born. Thus, any reading of the 1987 Constitution must be appropriately sensitive to the context from which it arose. As stated in *Civil Liberties Union v. Executive Secretary*:

A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. **Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed.** The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.[1] (Emphasis supplied)

The heart of the 1987 Constitution is the Article on Social Justice. This is appropos since it is a document that not only recognizes but tries to heal the wounds of history. To harken to the words of Cecilia Muñoz-Palma, President of the 1986 Constitutional Commission:

THE PRESIDENT: My distinguished colleagues in this Assembly:

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My colleagues, in all humility, but with profound pride, I vote in favor of the Constitution drafted by this Constitutional Commission because I believe that the document is a worthy and inspiring legacy we can hand down to the Filipino people of today, tomorrow, and for posterity.

The reasons I will give have been given by most of the Members of this Constitutional Commission this evening. But permit me to restate them just to stress the reasons why I am voting in favor.

For the first time in the history of constitution- making in our country, we set forth in clear and positive terms in the Preamble which is the beacon light of the new Charter, the noble goal to establish a just and humane society. This must be so because at present we have to admit that there are so few with so much and so many with so little. We uphold the Rule of Law where no man is above the law, and we adhere to the principles of truth, justice, freedom, equality, love and peace. Yes, for the first time and possibly this is the first Constitution where "love" is enshrined. This is most significant at this period in our national life when the nation is bleeding under the forces of hatred and violence, brothers fighting against brothers, Filipinos torturing and killing their own countrymen. Without love, there can be no peace.

The new Charter establishes a republican democratic form of government with three branches each independent and coequal of each other affording a check and balance of powers. Sovereignty resides in the people.

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For the first time, and possibly this is the first and only Constitution which provides for the creation of a Commission on Human Rights entrusted with the grave responsibility of investigating violations of civil and political rights by any

[1] G.R. No. 83896, 83815, 22 February 1991.

party or groups and recommending remedies therefor. The new Charter also sets forth quite lengthily provisions on economic, social and cultural rights spread out in separate articles such as the **Articles on Social Justice**, Education and Declaration of Principles. **It is a document which in clear and in unmistakable terms reaches out to the underprivileged, the paupers, the sick, the elderly, disabled, veterans and other sectors of society. It is a document which opens an expanded improved way of life for the farmers, the workers, fishermen, the rank and file of those in service in the government. And that is why I say that the Article on Social Justice is the heart of the new Charter.**[2] (Emphasis supplied)

That is why Section 1, Article XIII, provides that: "The Congress shall give **highest priority** to the enactment of measures that protect and enhance the right of all the people to human dignity, **reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.**"[3] As explained by this Court:

> Further, the quest for a better and more "equal" world calls for the use of equal protection as a tool of effective judicial intervention.
>
> **Equality is one ideal which cries out for bold attention and action in the Constitution.** The Preamble proclaims "equality" as an ideal precisely in protest against crushing inequities in Philippine society. **The command to promote social justice in Article II, Section 10, in "all phases of national development," further explicitated in Article XIII, are clear commands to the State to take affirmative action in the direction of greater equality.... [T]here is thus in the Philippine Constitution no lack of doctrinal support for a more vigorous state effort towards achieving a reasonable measure of equality.**
>
> Our present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. **Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.**[4] (Emphasis supplied)

That is also why the 1987 Constitution is replete with other social justice provisions, including Sections 9, 10, 13, 14, 18 and 22 of Article II, Section 2 of Article V, Section 5 (1) (2) of Article VI, Sections 1, 2, 3, 5, 6, 10, 11, 12, 13 of Article XII, and Article XIII. As aptly pointed out by Commissioner Guingona in his sponsorship speech for the approval of the entire draft of the 1987 Constitution, social justice was the underlying philosophy of the drafters when crafting the provisions of the fundamental law. Thus:

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[2] Vol. V, R.C.C No. 106, 12 October 1986.
[3] Emphasis supplied.
[4] *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, 15 December 2004.

MR. GUINGONA: Thank you, Mr. Presiding Officer.

This sponsorship speech is for the entire draft of the Constitution of the Republic of the Philippines.

Today, we have completed the task of drafting a Constitution which is reflective of the spirit of our time -a spirit of nationalism, a spirit of liberation, a spirit of rising expectations.

On June 2, forty-eight men and women met in this hall-men and women from different walks of life with diverse backgrounds and orientations, even with conflicting convictions, but all sharing the same earnest desire to serve the people and to help draft a Constitution which will establish a government that the people can trust and enthusiastically support, a Constitution that guarantees individual rights and serves as a barrier against excesses of those in authority.

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A Constitution of the people and for the people derives its authenticity and authority from the sovereign will; the power of the people precedes it. As such, it should reflect the norms, the values, the modes of thought of our society, preserve its heritage, promote its orderliness and security, protect its cherished liberties and guard against the encroachments of would-be dictators. These objectives have served as the framework in the work of drafting the 1986 Constitution.

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A significant innovation, as far as the legislative department is concerned, refers to the composition of the members of the House of Representatives. Representation in the Lower House has been broadened to embrace various sectors of society; in effect, enlarging the democratic base. It will be constituted by members who shall be elected in the traditional manner, representing political districts, as well as by members who shall be elected through the party list system.

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The institutions through which the sovereign people rule themselves are essential for the effective operation of government. But these are not enough in order that the body politic may evolve and progress. **There is need for an underlying socio-economic philosophy which would direct these political structures and serve as the mainspring for development. So it is that the draft Constitution contains separate Articles on Social Justice and National Economy and Patrimony.**

Talk of people's freedom and legal equality would be empty rhetoric as long as they continue to live in destitution and misery, without land, without employment, without hope. But in helping to bring about transformation, in helping the common man break away from the bondage of traditional society, in helping restore to him his dignity and worth, the right to individual initiative and to property shall be respected.

The Social Justice Article, to which our Commission President, the Honorable Cecilia Muñoz Palma, refers to as the "heart of the Constitution," provides that Congress shall give highest priority to the enactment of

measures that would reduce social, economic and political inequalities. The same article addresses the problems of (1) labor — local and overseas, organized and unorganized — recognizing the rights of all workers in the private as well as in the public sector, the rank and file and the supervisory, to self-organization, collective bargaining and peaceful and concerted activities including the right to strike in accordance with law; (2) the farmers, the farm workers, the subsistence fishermen and the fishworkers, through agrarian and natural resources reform; (3) the underprivileged and homeless citizens in urban centers and resettlement areas, through urban land reform and housing; (4) the health of the people, through an integrated and comprehensive approach to health development; (5) the women, by ensuring the fundamental equality of women and men before the law, and (6) people's organizations, by facilitating the establishment of adequate consultation mechanisms.

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These are some of the provisions which we have constitutionalized. These are some of the innovations that we have introduced. These are the ideas, values and institutions which we have drawn and which we trust would serve as the foundation of our society, the keystone of our national transformation and development, the driving force for what we pray would be our irreversible march to progress. In brief, this is what the men and women of the 1986 Constitutional Commission have drafted under the able, firm and dedicated leadership of our President, the Honorable Cecilia Muñoz Palma.

The Constitution that we have drafted is a practical instrument suited to the circumstances of our time. It is also a Constitution that does not limit its usefulness to present needs; one which, in the words of U.S. Supreme Court Chief Justice John Marshall, and I quote, "is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs."
As we present the proposed fundamental law, we pray that our efforts would pave the way towards the establishment of a renewed constitutional government which we were deprived of since 1972, that these efforts would ensure that the triumph at EDSA so deservingly won by the people shall continue to be enjoyed by us and our posterity for all time, that these efforts would result in the drafting of a democratic Constitution — a Constitution which is the repository of the people's inalienable rights; a Constitution that enshrines people's power and the rule of law; a Constitution which would seek to establish in this fair land a community characterized by moral regeneration, social progress, political stability, economic prosperity, peace, love and concern for one another; a Constitution that embodies vital living principles that seek to secure for the people a better life founded on liberty and welfare for all.

Mr. Presiding Officer, on behalf of this Commission's Sponsorship Committee, I have the honor to move for the approval of the draft Constitution of the Republic of the Philippines on Second Reading.[5]

It is within this historical and textual millieu that the party-list provisions in the 1987 Constitution should be interpreted. Every provision should be read in the

[5] VOL V, R.C.C No. 106, 12 October 1986.

context of all the other provisions so that contours of constitutional policy is made clear.[6]

The place of the party-list system in the constitutional scheme was that it provided for the realization of the ideals on social justice in the political arena.[7]

The concept is not new, as discussed by political theorist Terry MacDonald:

> First, an idea that has received much attention among democratic theorists is that representatives should be selected to 'mirror' the characteristics of those being represented – in terms of gender, ethnicity, and other such characteristics judged to be socially relevant. **This idea has been advocated most notably in some recent democratic debates focused on the need for special representation of disadvantaged and under-represented social groups within democratic assemblies.** The applicability of this idea of 'mirror' representation is not confined to debates about representing marginalized minorities within nation-states; Iris Young further applies this model of representation to global politics, arguing that global representation should be based on representation of the various 'peoples' of the world, each of which embodies its own distinctive identity and 'perspective'. In practice, special representation for certain social groups within a 'mirror' framework can be combined with election mechanisms in various ways – **such as by according quotas of elected representatives to designated social groups. But since the selection of these 'social groups' for special representation would nonetheless remain a distinct element of the process of selecting legitimate representatives, occurring prior to the electoral process, such 'mirror' representation is still recognizable as a distinct mechanism for selecting representative agents.**[8] (Emphasis supplied)

Two months after their initial debates on the form and structure of government that would best promote equality, the Commission broke ground on the promotion of political equality and provided for sectoral representation in the party-list system of the legislature. Commissioner Villacorta opened the debates on the party-list system.[9]

> MR. VILLACORTA: ... 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 Jaime Tadeo explained the circumstances the party-list system sought to address:[10]

> MR. TADEO: ... *Ang Cory government ay iniakyat ng people's power. Kaya kami naririto sa Con-Com ay dahil sa people's power – nasa amin ang people, wala sa amin ang power. Ganito ito kahalaga.*
> ...

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[6] See *Chavez v. JBC*, G.R. No. 202242, 17 July 2012.
[7] CHIEF JUSTICE REYNATO PUNO, EQUAL DIGNITY & RESPECT: THE SUBSTANCE OF EQUAL PROTECTION AND SOCIAL JUSTICE (2012), 265 [hereinafter, PUNO].
[8] TERRY MACDONALD, GLOBAL STAKEHOLDER DEMOCRACY: POWER AND REPRESENTATION BEYOND LIBERAL STATES (2008), at 166-167.
[9] Puno, 265.
[10] Id.

> *The Legislature is supposed to implement or give flesh to the needs and aspirations of the Filipino people.*
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> *Ganoon kahalaga ang National Assembly kaya't napakahalaga noong Section 5 and Section 31 ng ating Constitution. Our experience, however, has shown that legislation has tended to benefit more the propertied class who constitutioes a small minority in our society than the impoverished majority, 70 percent of whom live below the poverty line. This has come about because the rich have managed to dominate and control the legislature, while the basic sectors have been left out of it. So, the critical question is, how do we ensure ample representation of basic sectors in the legislature so that laws reflect their needs and aspirations?*

RA 7941 was enacted pursuant to the party-list provisions of the 1987 Constitution. Not only is it a "social justice tool", as held in *Ang Bagong Bayani*,[11] but it is **primarily so**. This is not mere semantics but a matter of legal and historical accuracy with material consequences in the realm of statutory interpretation.

The *ponencia* gives six (6) parameters that the COMELEC should adhere to in determining who may participate in the coming 13 May 2013 and subsequent party-list elections. I shall discuss below my position in relation to the second, fourth and sixth parameter enunciated in the *ponencia*.

"Marginalized and underrepresented" under Section 2 of RA 7941 qualifies national, regional and sectoral parties or organizations.

Under the second parameter, "[n]ational parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any "marginalized and underrepresented" sector." In a nutshell, the *ponencia* interprets "marginalized and underrepresented" in Section 2 of RA 7941 to qualify only sectoral parties or organizations, and not national and regional parties or organizations.

I dissent for the following reasons.

First, since the party-list system is primarily a tool for social justice, the standard of "marginalized and underrepresented" under Section 2 must be deemed to qualify **national**, **regional** and **sectoral** parties or organizations. To argue otherwise is to divorce national and regional parties or organizations from the primary objective of attaining social justice, which objective surrounds, permeates, imbues, and underlies the entirety of both the 1987 Constitution and RA 7941.

Second, Section 2 of RA 7941 states that the party-list system seeks to "enable Filipino citizens belonging to the **marginalized and underrepresented sectors, organizations and parties** . . . to become members of the House of

[11] G.R. No. 147589, 26 June 2001.

Representatives." On its face, it is apparent that "marginalized and underrepresented" qualifies "sectors", "organizations" and "parties".

Third, even assuming that it is not so apparent, in terms of statutory construction, the import of "social justice" that has developed in various decisions is that when the law is clear and valid, it simply must be applied; but when the law can be interpreted in more ways than one, an interpretation that favors the underprivileged must be favored.[12]

Lastly, deliberations of the Constitutional Commission show that the party-list system is a countervailing means for the weaker segments of our society to overcome the preponderant advantages of the more entrenched and well-established political parties. To quote:

> MR. OPLE: So, Commissioner Monsod grants that **the basic principle for a party list system is that it is a countervailing means for the weaker segments of our society, if they want to seek seats in the legislature, to overcome the preponderant advantages of the more entrenched and well-established political parties**, but he is concerned that the mechanics might be inadequate at this time.
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> MR. MONSOD: **Not only that**; talking about labor, for example — I think Commissioner Tadeo said there are 10 to 12 million laborers and I understand that organized labor is about 4.8 million or 4.5 million — if the laborers get together, they can have seats. With 4 million votes, they would have 10 seats under the party list system.
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> MR. OPLE: So, the Commissioner would favor a party list system that is open to all and would not agree to a party list system which seeks to accommodate, in particular, the so-called sectoral groups that are predominantly workers and peasants?
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> MR. MONSOD: If one puts a ceiling on the number that each party can put within the 50, and I am assuming that maybe there are just two major parties or three at the most, then it is already a form of opening it up for other groups to come in. All we are asking is that they produce 400,000 votes nationwide. **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.[13] [emphasis supplied]

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[12] See *Perez-Rosario v. CA*, G.R. No. 140796, 30 Jun 2006; BERNAS, PRIMER ON THE 1987 CONSTITUTION (2006), 488.

[13] Volume II, R.C.C., 258-259, 25 July 1986.

However, the second parameter would allow the more entrenched and well-established political parties and organizations to compete with the weaker segments of society, which is the very evil sought to be guarded against.

The *ponencia's* second parameter is premised on the following grounds, among others.

First, the *ponencia* explains that the text of the 1987 Constitution and RA 7941, and the proceedings of the Constitutional Commission evince an indisputable intent to allow national, regional, and sectoral parties and organizations to participate in the party-list system. To require national and regional parties and organizations to represent the marginalized and underrepresented makes them effectively sectoral parties and organizations and violates this intent.

The error here is to conclude that if the law treats national, regional and sectoral parties and organizations the same by requiring that they represent the "marginalized and underrepresented," they become the same. By analogy, people can be treated similarly but that does not make them identical.

Second, the *ponencia* rules that since under the Section 5 (2), Article VI of the 1987 Constitution, only 50% of the seats are allocated during the first three consecutive terms of Congress after the ratification of the 1987 Constitution to representatives from the labor, peasant, urban poor, etc., it necessarily follows that the other 50% would be allocated to representatives from sectors which are non-marginalized and underrepresented.

The error here is to conclude that the latter statement necessarily follows if the former is true. This is not so since the latter 50% can very well include representatives from other non-enumerated sectors, or even national or regional parties and organizations, all of which can be "marginalized and underrepresented."

Third, the *ponencia* adds that it would prevent ideology-based and cause-oriented parties, who cannot win in legislative district elections, from participating in the party-list system.

The error here is to conclude that such ideology-based or cause-oriented parties are necessarily non-marginalized or underrepresented, which would in turn depend on how "marginalization and underrepresentation" is defined. The *ponencia* appears to be operating under a preconceived notion that "marginalized and underrepresented" refers only to those "economically" marginalized.

However, there is no need for this Court to define the phrase "marginalized and underrepresented," primarily because it already constitutes sufficient legislative standard to guide the COMELEC as an administrative agency in the exercise of its discretion to determine the qualification of a party-list group.

As long as such discretion is not gravely abused, the determination of the COMELEC must be upheld. This is consistent with our pronouncement in *Ang Bagong Bayani* that, "the role of the COMELEC is to see to it that only those Filipinos that are 'marginalized and underrepresented' become members of the Congress under the party-list system."

For as long as the agency concerned will be able to promulgate rules and regulations to implement a given legislation and effectuate its policies, and that these regulations are germane to the objects and purposes of the law and not in contradiction to but in conformity with the standards prescribed by the law, then the standard may be deemed sufficient.[14]

We should also note that there is a time element to be considered here, for those who are marginalized and underrepresented today may no longer be one later on. Marginalization and underrepresentation is an ever evolving concept, created to address social disparities, to be able to give life to the "social justice" policy of our Constitution.[15] Confining its definition to the present context may unduly restrict the COMELEC of its quasi-legislative powers which enables it to issue rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress.[16]

Flexibility of our laws is a key factor in reinforcing the stability of our Constitution, because the legislature is certain to find it impracticable, if not impossible, to anticipate situations that may be met in carrying laws into effect.[17] The growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the laws, the rigidity of the theory of separation of governmental powers is largely responsible in empowering the COMELEC to not only execute elections laws, but also promulgate certain rules and regulations calculated to promote public interest.[18] This is the principle of subordinate legislation discussed in *People v. Rosenthal*[19] and in *Pangasinan Transportation vs. Public Service Commission*.[20]

This is consistent with our pronouncement in *Ang Bagong Bayani* that, "the role of the COMELEC is to see to it that only those Filipinos that are 'marginalized and underrepresented' become members of the Congress under the party-list system."

Fourth, the *ponencia* holds that failure of national and regional parties to represent the marginalized and underrepresented is not a ground for the COMELEC to refuse or cancel registration under Section 6 of RA 7941.

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[14] *Eastern Shipping Lines v. POEA*, G.R. No. 76633, 18 October 1988.
[15] *Gandara Mill Supply v. NLRC*, G.R. No. 126703, 29 December 1998.
[16] *Bedol v. COMELEC*, G.R. No. 179830, 3 December 2009.
[17] *Conference of Maritime Manning Agencies v. POEA*, G.R. No. 114714, 21 April 1995.
[18] Id.
[19] G.R. No. 46076, 46077, 12 June 1939.
[20] G.R. No. 47065, 26 June 1940.

The error here is that under Section 6 (5), the COMELEC may refuse or cancel if the party "violates or fails to comply with laws." Thus, before the premise can be correct, it must be first established that "marginalization and underrepresentation" is not a requirement of the law, which is exactly what is at issue here.

Fifth, the *ponencia* makes too much of the fact that the requirement of "marginalization and underrepresentation" appears only once in RA 7941.

The error here is to conclude that the phrase has to appear more than once to carry sufficient legal significance. "Marginalization and underrepresentation" is in the nature of a legislative standard to guide the COMELEC in the exercise of its administrative powers. This Court has held that to avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. Otherwise, the charge of complete abdication may be hard to repel. A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. The standard does not even have to be spelled out. It could be implied from the policy and purpose of the act considered as a whole.[21] Consequently, we have held that "public welfare"[22] and "public interest"[23] are examples of such sufficient standards. Therefore, that it appears only once in RA 7941 is more than sufficient, since a standard could even be an implied one.

National, regional and sectoral parties or organizations must both represent the "marginalized and underrepresented" and lack "well-defined political constituencies".

The fourth parameter in the *ponencia* states:

> 4. Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector. The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communites, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political constituencies" include professionals, the elderly, women, and the youth.

I dissent for the following reasons.

First, Section 2 of RA 7941 clearly makes the "lack of a well-defined political constituency" as a requirement along with "marginalization and underrepresentation." They are cumulative requirements, not alternative. Thus,

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[21] *Trade Unions of the Philippines v. Ople*, G.R. L-67573, 19 June 1985.
[22] *Calalang v Williams*, 70 Phil 726 (1940).
[23] People v Rosenthal, 68 Phil 328 (1939).

sectoral parties and organizations intending to run in the party-list elections must meet both.

Second, the *ponencia* appears to be operating under preconceived notions of what it means to be "marginalized and underrepresented" and to "lack a well-defined political constituency." For reasons discussed above, the exact content of these legislative standards should be left to the COMELEC. They are ever evolving concepts, created to address social disparities, to be able to give life to the "social justice" policy of our Constitution.

The disqualification of a nominee should not disqualify the party-list group provided that: (1) it meets Guideline Nos. 1-5 of *Ang Bagong Bayani* (alternately, on the basis of the new parameters set in the *ponencia*, that they validly qualify as national, regional or sectoral party-list group); and (2) one of its top three (3) nominees remains qualified.

I concur with the *ponencia* that an advocate may qualify as a nominee. However, I would like to explain my position with regard to the sixth parameter set forth in the *ponencia* with respect to nominees.

To recall, the sixth parameter in the *ponencia* provides:

> 6. National, regional and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remain qualified.

I propose the view that the disqualification of a party-list group due to the disqualification of its nominee is only reasonable if based on material misrepresentations regarding the nominee's qualifications. **Otherwise, the disqualification of a nominee should not disqualify the party-list group provided that: (1) it meets Guideline Nos. 1-5 of *Ang Bagong Bayani* (alternately, on the basis of the new parameters set in the *ponencia*, that they validly qualify as national, regional or sectoral party-list group); and (2) one of its top three (3) nominees remains qualified, for reasons explained below.**

The constitutional policy is to enable Filipinos belonging to the marginalized and underrepresented sectors to contribute legislation that would benefit them. Consistent therewith, R.A. No. 7941 provides that the State shall develop and guarantee a full, free and open party-list system that would achieve proportional representation in the House of Representatives by enhancing party-list groups'

"chances to compete for and win seats in the legislature."[24] Because of this policy, I believe that the COMELEC cannot interpret Section 6 (5) of R.A. No. 7941 as a grant of purely administrative, quasi-legislative or quasi-judicial power to *ipso facto* disqualify party-list groups based on the disqualification of a single nominee.

It should also be pointed out that the law itself considers a violation of election laws as a disqualifying circumstance. However, for an act or omission to be considered a violation of election laws, it must be demonstrative of gross and willful disregard of the laws or public policy. The standard cannot be less for the rules and regulations issued by the COMELEC. Thus, any disqualification of a party-list group based on the disqualification of its nominee must be based on a material misrepresentation regarding that nominee's qualifications. This also finds support in Section 6 (6) of R.A. No. 7941 which considers declaring "untruthful statements in its petition" as a ground for disqualification.

As regards the second qualification mentioned above, party-list groups should have at least one qualified nominee among its top three nominees for it to be allowed to participate in the elections. This is because if all of its top three nominees are disqualified, even if its registration is not cancelled and is thus allowed to participate in the elections, and should it obtain the required number of votes to win a seat, it would still have no one to represent it, because the law does not allow the group to replace its disqualified nominee through substitution. This is a necessary consequence of applying Sections 13 in relation to Section 8 of R.A. No. 7941.

Section 13 provides that party-list representatives shall be proclaimed by the COMELEC based on "the list of names submitted by the respective parties x x x according to their ranking in the said list." The ranking of a party-list group's nominees is determined by the applicability or the inapplicability of Section 8, the last paragraph of which reads:

> x x x No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list.

Thus, only in case of death, incapacity, or withdrawal does the law allow a party-list group to change the ranking of its nominees in the list it initially submitted. The ranking of the nominees is changed through substitution, which according to Section 8 is done by placing the name of the substitute at the end of the list. In this case, all the names that come after the now vacant slot will move up the list. After substitution takes effect, the new list with the new ranking will be used by COMELEC to determine who among the nominees of the party-list group shall be proclaimed, from the first to the last, in accordance with Section 13.

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[24] Section 2, Republic Act No. 7941.

If any/some of the nominees is/are disqualified, no substitution will be allowed. Thus, their ranking remains the same and should therefore be respected by the COMELEC in determining the one/s that will represent the winning party-list group in Congress. This means that if the first nominee is disqualified, and the party-list group is able to join the elections and becomes entitled to one representative, the second cannot take the first nominee's place and represent the party-list group. If, however, the party-list group gets enough votes to be entitled to two seats, then the second nominee can represent it.

Allowing a party-list group, which has successfully passed Guideline Nos. 1-5 of *Ang Bagong Bayani*[25] (alternately, pursuant to the present holding of the *ponencia*, that it qualifies as a national, regional or sectoral party or organization) and has established the qualification of at least one (1) of its top three (3) nominees, to participate in the elections is a better interpretation of the law. It is fully consistent with the policy of developing and guaranteeing a full, free and open party-list system that would achieve proportional representation in the House of Representatives by enhancing party-list groups' "chances to compete for and win seats in the legislature"[26] while providing sufficient disincentives for party-list groups to flood the COMELEC with nominees as Section 8 of R.A. No. 7941 only requires that they submit not less than five (5).

It must be noted that this method, together with the seat-allocation system introduced in *BANAT v. COMELEC*,[27] will allow more party-list groups to be represented in Congress.

Let us use a hypothetical scenario to illustrate.

The table below uses the seat-allocation system introduced in *BANAT*. It assumes the following facts: (1) 35 party-list groups participated in the elections; (2) 20 million votes were cast for the party-list system; and (3) there are 50 seats in Congress reserved for the party-list representatives.

The succeeding paragraphs will explain how the *BANAT* method will operate to distribute the 50 seats reserved in the House of Representatives given the foregoing facts and the number of votes obtained by each of the 35 party-list groups.

Rank	Party-list group	Votes Garnered	%	1st Round (guaranteed seats)	2nd Round (additional seats)	Total # of seats
1	AAA	1,466,000	7.33%	1	2	3

[25] *Supra.*
[26] Section 2, Republic Act. No. 7941.
[27] G.R. Nos. 179271 and 179295, 21 April 2009.

2	BBB	1,228,000	6.14%	1	2	3
3	CCC	1,040,000	4.74%	1	1	2
4	DDD	1,020,000	3.89%	1	1	2
5	EEE	998,000	3.88%	1	1	2
6	FFF	960,000	3.07%	1	1	2
7	GGG	942,000	2.92%	1	1	2
8	HHH	926,000	2.65%	1	1	2
9	III	910,000	2.57%	1	1	2
10	JJJ	796,000	2.57%	1	1	2
11	KKK	750,000	2.42%	1	1	2
12	LLL	738,000	2.35%	1	1	2
13	MMM	718,000	2.32%	1	1	2
14	NNN	698,000	2.13%	1	1	2
15	OOO	678,000	2.12%	1	1	2
16	PPP	658,000	2.06%	1	1	2
17	QQQ	598,000	2.02%	1	1	2
18	RRR	482,000	1.95%		1	1
19	SSS	378,000	1.89%		1	1
20	TTT	318,000	1.54%		1	1
21	UUU	294,000	1.47%		1	1
22	VVV	292,000	1.44%		1	1
23	WWW	290,000	1.43%		1	1
24	XXX	280,000	1.37%		1	1
25	YYY	274,000	1.37%		1	1
26	ZZZ	268,000	1.34%		1	1
27	1-A	256,000	1.24%		1	1
28	1-B	248,000	1.23%		1	1
29	1-C	238,000	1.18%		1	1
30	1-D	222,000	1.11%		1	1
31	1-E	214,000	1.07%		1	1
32	1-F	212,000	1.06%			
33	1-G	210,000	1.05%			
34	1-H	206,000	1.03%			
35	I-I	194,000	1.02%			

	20,000,000	17	33	50

We explained in *BANAT* that the first clause of Section 11(b) of R.A. 7941 guarantees a seat to the party-list groups "receiving at least two percent (2%) of the total votes cast for the party-list system." In our hypothetical scenario, the party-list groups ranked 1st to 17th received at least 2% of the 20 million votes cast for the party-list system. In effect, all 17 of them were given guaranteed seats. The distribution of these so-called guaranteed seats to the "two percenters" is what *BANAT* calls the "first round of seat allocation."

From the first round of seat allocation, the total number of guaranteed seats allocated to the two percenters will be subtracted from "20% of the members of the House of Representatives" reserved by the Constitution for party-list representatives, which in this hypothetical scenario is 50 seats. Assuming all 17 of the two percenters were able to establish the qualification of their first nominee, the remaining 33 will be distributed in what *BANAT* termed as the "second round of seat allocation."

These remaining 33 seats are called "additional seats." The rules followed in the distribution/allocation of these seats are fairly simple. If a party-list group's percentage is multiplied by the total number of additional seats and the product is no less than 2, then that party-list will be entitled to 2 additional seats. This is to keep in line with the 3-seat limit rule. In our hypothetical scenario as shown by the table above, only the top two party-list groups, AAA and BBB are entitled to 2 additional seats. Assuming, again, that the 2nd and 3rd nominees of both AAA and BBB are qualified, then only 29 will be left for distribution.

In distributing the remaining 29 seats, it must be kept in mind that the number of votes cast in favor of the remaining party-list groups becomes irrelevant. At this stage, the only thing that matters is the group's ranking. The party-list group that comes after BBB will be given 1 additional seat and the distribution of one seat per party-list group, per rank, continues until all 50 seats are accounted for; the second round of seat allocation stops at this point. In the table above, the 50th seat was awarded to I-E the party-list group that ranked 31st in the election.

In the foregoing discussion, all the nominees of the party-list groups are qualified. What happens if one or some of the nominees are disqualified? Following the proposed method, if one or two of the party-list groups with guaranteed seats have a disqualified first nominee, their second nominee, if qualified, can still represent them in Congress based on the second round of seat allocation.

In the event that some of the nominees of party-list groups—whether or not entitled to guaranteed seats—are disqualified, then those party-list groups, which without the disqualification of these nominees would not be entitled to a seat, would now have a higher chance to have a representative elected in Congress.

If, for example, the first nominee of BBB is disqualified, then it forfeits its guaranteed seat and the additional seats for distribution in the second round will be increased by 1. With 34 seats to be allocated, I-E will now qualify to obtain a seat in its favor, assuming that its first nominee is qualified. If I-E's first nominee is disqualified, then we will proceed to the party-list next-in-rank, which is I-G. This method is followed down the line until all 50 seats are allocated.

If we follow the proposed method, this would yield a higher number of party-list groups represented in Congress, but with fewer representatives per group.

This proposed method can be further illustrated through another example, this time using a "non-two percenter" party-list group. In the table above, RRR failed to garner at least 2% of the total votes. However, in the second round of seat allocation, it was granted 1 seat. To be able to send a representative in Congress, RRR's first nominee should be qualified to sit. Assuming that its first nominee was disqualified, its second or third nominee cannot occupy said seat; instead, it will forfeit the seat and such seat will now go to I-E. Again, this method is followed down the line until all 50 seats are allocated.

In conclusion, I submit that a party-list group should be allowed to participate in the elections despite the disqualification of some of its nominees, provided that there remains a qualified nominee out of the top three initially submitted. Not only is this the better policy, but this is also the interpretation supported by law.

Only nine of the petitions should be remanded.

Given the circumstances above-mentioned, I respectfully dissent on the remand of all petitions to the COMELEC for reasons to be discussed below.

The *ponencia* justifies the remand of all petitions in this wise, *viz*:

> x x x Thus, the present petitions should be remanded to the COMELEC not because COMELEC committed grave abuse of discretion in disqualifying petitioners, but because petitioners may now possibly qualify to participate in the coming 13 May 2013 party-list elections **under the new parameters prescribed by this Court.** (Emphasis supplied)

The "new parameters" set forth in the *ponencia's* guidelines focus mainly on two (2) grounds used by the COMELEC to cancel registration: (1) the standard of marginalized and underrepresented as applied to national, regional and sectoral parties and organizations; and (2) the qualification of nominees. From such examination, we can conclude that, in relation to the other grounds used by COMELEC to cancel registration (other than those two grounds mentioned above), the doctrines remain unchanged. Thus, a remand of those petitions is unnecessary,

considering that the acts of the COMELEC pertaining to their petitions are upheld. The *ponencia* even admits that COMELEC did not commit grave abuse of discretion in following prevailing jurisprudence in disqualifying petitioners.

Consequently, the remand should only pertain to those party-list groups whose registration was cancelled on the basis of applying the standard of "marginalized and underrepresented" and the qualification of nominees wherein the "new parameters" apply. If other grounds were used by COMELEC other than those with "new parameters,"—say, for example, failure to prove track record, a remand would be uncalled for because the doctrine pertaining to the other grounds remain unchanged.

Despite the new doctrine set forth in the *ponencia*, at the very least, only nine (9) petitions should be ordered remanded to the COMELEC. In these nine (9) petitions, the COMELEC cancelled the registration of the party-list groups solely on the ground that their nominees are disqualified. In making such a pronouncement, the COMELEC merely used as yardstick whether the nominees actually belong to the marginalized and underrepresented, and not whether they could qualify as advocates, and for this reason, I recommend that the following cases be REMANDED to the COMELEC. These are:

1. Alliance for Rural and Agrarian Reonstruction, Inc. (ARARO
2. Agapay ng Indigenous Peoples Rights Alliance, Inc. (A-IPRA)
3. Aangat Tayo (AT)
4. A Blessed Party-List (a.k:a Blessed Federation of Farmers and Fishermen International, Inc.) [A BLESSED]
5. Action League of Indigenous Masses (ALIM)
6. Butil Farmers Party (BUTIL)
7. Adhikain at Kilusan ng Ordinaryong Tao Para sa Lupa, Pabahay, Hanapbuhay at Kaunlaran (AKO BAHAY)
8. Akbay Kalusugan, Inc. (AKIN)
9. 1-UNITED TRANSPORT KOALISYON (1-UTAK)

Assuming for the sake of argument that we agree with the *ponencia's* take that the phrase "marginalized and underrepresented" qualifies only sectoral parties, still, a remand of all the petitions remain uncalled for. Out of the 52 petitions, there are only 11 party-list groups which are classified as national or regional parties.[28] Thus, if we were to strictly apply the *ponencia's* guidelines, only 20 petitions ought to be remanded.

[28] The national parties are Alliance for Nationalism and Democracy (ANAD), Bantay Party-List (BANTAY), and Alliance of Bicolnon Party (ABP). On the other hand, the regional parties are Ako Bicol Political Party (AKB), Akyson Magsasaka – Partido Tining ng Masa (AKMA-PTM), Ako an Bisaya (AAB), Kalikasan Party-List (KALIKASAN), 1 Alliance Advocating Autonomy Party (1AAAP), Abyan Ilonggo Party (AI), Partido ng Bayan and Bida (PBB), and Pilipinas Para sa Pinoy (PPP).

The COMELEC did not violate Section 3, Article IX-C of the Constitution.

It bears stressing that COMELEC Resolution No. 9513 does not violate Section 3, Article IX-C of the Constitution which requires a prior motion for reconsideration before the COMELEC can decide election cases *en banc*. To recall, the Resolution allows the COMELEC *en banc*, without a motion for reconsideration, to conduct (1) an automatic review of a decision of a COMELEC division granting a petition for registration of a party-list group or organization; and (2) a summary evidentiary hearing for those already accredited and which have manifested their intent to participate in the 2013 national and local elections for the purpose of determining their continuing compliance with the requirements of RA No. 7941 and the *Ang Bagong Bayani*[29] guidelines.

Section 3 only applies when the COMELEC is exercising its quasi-judicial powers which can be found in Section 2 (2) of the same article. However, since the conduct of automatic review and summary evidentiary hearing is an exercise of COMELEC's administrative powers under Section 2 (5), the prior motion for reconsideration in Section 3 is not required.

It is in this light that I would like to further elucidate why the power under Section 2 (5) is not quasi-judicial but administrative in nature in order to help clarify the true distinction between the two. In a number of cases, this Court has had the opportunity to distinguish quasi-judicial from administrative power. Thus, in *Limkaichong v COMELEC*,[30] we held that:

> The term "administrative" connotes or pertains to "administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things." **It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon**. This is to be distinguished from "quasi-judicial function", a term which applies, among others, to the action or discretion of public administrative officers or bodies, who are required **to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature**. [emphasis supplied]

However, there are administrative proceedings, such as a preliminary investigation before the public prosecutor, that also entail the "opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon," but are not considered quasi-judicial in the proper sense of the term. As held in *Bautista v CA*:[31]

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[29]G.R. No. 147589, 26 June 2001.
[30]G.R. Nos. 178831-32, 179120, 179132-33, 179240-41, 1 April 2009.
[31]G.R. No. 143375, 6 July 2001.

> Petitioner submits that a prosecutor conducting a preliminary investigation performs a quasi-judicial function, citing *Cojuangco v. PCGG*, *Koh v. Court of Appeals*, *Andaya v. Provincial Fiscal of Surigao del Norte* and *Crespo v. Mogul*. **In these cases this Court held that the power to conduct preliminary investigation is quasi-judicial in nature. But this statement holds true only in the sense that, like quasi-judicial bodies, the prosecutor is an office in the executive department exercising powers akin to those of a court. Here is where the similarity ends.**
>
> A closer scrutiny will show that **preliminary investigation is very different from other quasi-judicial proceedings**. A quasi-judicial body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making."
>
> x x x x
>
> On the other hand, **the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.**
>
> Hence, the Office of the Prosecutor is not a quasi-judicial body; necessarily, its decisions approving the filing of a criminal complaint are not appealable to the Court of Appeals under Rule 43. Since the ORSP has the power to resolve appeals with finality only where the penalty prescribed for the offense does not exceed *prision correccional*, regardless of the imposable fine, the only remedy of petitioner, in the absence of grave abuse of discretion, is to present her defense in the trial of the case. (emphasis supplied)

While the exercise of quasi-judicial and administrative power may both involve an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon, the distinction I believe is that the exercise of the former has for its purpose the adjudication of rights with finality.[32] This makes it akin to judicial power which has for its purpose, among others, the settlement of actual controversies involving rights which are legally demandable and enforceable.[33]

Another way to dispose of the issue of the necessity of a prior motion for reconsideration is to look at it through the lens of an election case. The phrase "all such election cases" in Section 3 has been read in relation to Section 2 (2) of Article IX-C, *viz*:

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[32] *Dole Philippines v. Esteva*, G.R. No. 161115, 30 November.2006.
[33] 1987 CONSTITUTION, ARTICLE VIII, SECTION 1.

What is included in the phrase "all such election cases" may be seen in Section 2(2) of Article IX(C) of the Constitution which states:

> Section 2. The Commission on Elections shall exercise the following powers and functions:
>
> xxxx
>
> (2) Exercise exclusive original jurisdiction over all **contests** relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all **contests** involving elective municipal of officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.[34]

As to the nature of "contests," the Court has already defined it under the penumbra of election as follows:

> **Ordinary usage would characterize a "contest" in reference to a post-election scenario.** Election contests consist of either an election protest or a quo warranto which, although two distinct remedies, would have one objective in view, i.e., to dislodge the winning candidate from office.
>
> x x x x
>
> The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President", of the Philippines, and not of "candidates" for President or Vice-President. A quo warranto proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. **In such context, the election contest can only contemplate a post-election scenario. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election scenario.**
>
> It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, **would not include cases directly brought before it, questioning the qualifications of a candidate**for the presidency or vice-presidency before the elections are held. (Emphasis supplied)[35]

In *Panlilio v Commission on Elections*,[36] it was also held that the primary purpose of an election case is the ascertainment of the real candidate elected by the electorate. Thus, there must first be an election before there can be an election case. Since the national and local elections are still to be held on 13 May 2013, the conduct of automatic review and summary evidentiary hearing under the Resolution No. 9513 cannot be an election case. For this reason, a prior motion for reconsideration under Section 3 is not required.

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[34] *Mendoza v. Commission on Elections*, G.R. No. 191084, 25 March 2010.
[35] *Tecson v. Commission on Elections*, G.R. No. 161434, 3 March 2004.
[36] G.R. No. 181478, 15 July 2009.

In view of the foregoing, I vote to **REMAND** only the following cases: ARARO, A-IPRA, AT, A BLESSED, ALIM, BUTIL, AKO BAHAY, AKIN, and 1-UTAK. The Petitions of all the other Petitioners should be dismissed.

MARIA LOURDES P. A. SERENO
Chief Justice