Republic of the Philippines
Supreme Court
Manila

EN BANC

ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC. (ANGKLA), and SERBISYO SA BAYAN PARTY (SBP),	**G.R. No. 246816**
Petitioners,	Present:
- versus -	GESMUNDO, *Chief Justice*, PERLAS-BERNABE, LEONEN, CAGUIOA, HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M. GAERLAN, ROSARIO, LOPEZ, J. DIMAAMPAO,** MARQUEZ, *JJ.*
COMMISSION ON ELECTIONS (sitting as the National Board of Canvassers), CHAIRMAN SHERIFF M. ABAS, COMMISSIONER AL A. PARREÑO, COMMISSIONER LUIE TITO G. GUIA, COMMISSIONER MA. ROWENA AMELIA V. GUANZON, *COMMISSIONER SOCORRO B. INTING, COMMISSIONER MARLON S. CASQUEJO, AND COMMISSIONER ANTONIO T. KHO, JR.	
Respondents,	
AKSYON MAGSASAKA – TINIG PARTIDO NG MASA (AKMA-PTM)	Promulgated:
Petitioner-in-Intervention.	December 7, 2021

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RESOLUTION

LAZARO-JAVIER, *J.*:

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* Also referred to as Commissioner B. Soccorro Inting in the petition.
** On official leave but left Separate Concurring and Dissenting Opinion.

Antecedents

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

> **ACCORDINGLY**, the Amended Petition and Petition-in-Intervention are **DENIED** for lack of merit. The Court **declares as NOT UNCONSTITUTIONAL** Section 11 (b), RA 7941 pertaining to the allocation of additional seats to party-list parties, organizations, or coalitions in proportion to their respective total number of votes. Consequently, National Board of Canvassers Resolution No. 004-19 declaring the winning party-list groups in the May 13, 2019 elections is upheld.
>
> Let copy of this Decision be furnished to the House of Representatives and the Senate of the Philippines as reference for a possible review of RA 7941, specifically Section 11 (b), pertaining to the seat allocation for the party-list system.
>
> **SO ORDERED.**[2]

The challenged proviso reads:

> **Section 11.** *Number of Party-List Representatives.* x x x
>
> x x x x
>
> (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: *Provided*, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats **in proportion to their *total* number of votes**: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats. (emphasis and underscoring added)

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

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

[2] *Rollo*, p. 35.

[3] 609 Phil. 751 (2009).

[4] *Id* at 769.

Round 1:

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

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

Round 2, Part 1:

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

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

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

Round 2, Part 2:

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

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

Petitioners do not propose that the two-percenters be treated absolutely in the same way as non-two-percenters and admit that the former should have

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[5] In *BANAT v. Commission on Elections*, 604 Phil. 131 (2009), the Court declared the two percent threshold unconstitutional insofar as the allocation of additional seats is concerned.
[6] *Rollo*, p. 419.
[7] *Id.* at 420.
[8] *Id.* at 421.
[9] *Id.* at 423.

preference; but such preference should only be observed and limited to the grant of guaranteed seats in first round.[10] Otherwise, the votes of the two-percenters "would effectively dilute the weight of the votes for the non-two percenters" which is "inconsistent with the voters' constitutional right to an equally weighted vote."[11]

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

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

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

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

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

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

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

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

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[10] *Id.* at 422-423.
[11] *Id.* at 424-425.
[12] *Id.* at 434.
[13] *Id.* at 429-433.

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

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

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

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

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

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

Threshold Issue

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

Ruling

We deny petitioners' motion for reconsideration.

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

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[14] *Id.* at 429.
[15] *Id.* at 460-468.
[16] *Id.* at 468-470.
[17] *Id.* at 471-477.

But majority of the Court remain unconvinced.

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

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

> Evidently, the idea of the people, as individuals, electing their representatives under the principle of "one person, one vote," is the cardinal feature of any polity, like ours, claiming to be a "democratic and republican State." A democracy in its pure state is one where the majority of the people, under the principle of "one person, one vote," directly run the government. A republic is one which has no monarch, royalty or nobility, ruled by a representative government elected by the majority of the people under the principle of "one person, one vote," where all citizens are equally subject to the laws. A republic is also known as a representative democracy. The democratic and republican ideals are intertwined, and converge on the common principle of *equality* — equality in voting power, and equality under the law.
>
> **The constitutional standard of proportional representation is rooted in equality in voting power — that each vote is worth the same as any other vote, not more or less.** Regardless of race, ethnicity, religion, sex, occupation, poverty, wealth or literacy, *voters have an equal vote*. Translated in terms of legislative redistricting, this means equal representation for equal numbers of people or equal voting weight per legislative district. In constitutional parlance, **this means representation for every legislative district "in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" or proportional representation.** Thus, the principle of "one person, one vote" or equality in voting power is inherent in proportional representation.[19] (emphasis added)

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

> Based on the 2007 census, the proposed First District under RA 9716 will have a population of only 176,383, which is 29% below the constitutional minimum population of 250,000 per legislative district. In

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[18] 631 Phil. 595 (2010).

[19] *Id.* at 637-638.

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

> contrast, the remaining four proposed districts have populations way above the minimum with the highest at 439,043 (proposed Third District), lowest at 276,777 (proposed Second District) and an average of 379,359. Indeed, the disparity is so high that three of the proposed districts (Third, Fourth, and Fifth Districts) have populations more than double that of the proposed First District. This results in wide variances among the districts' populations. Still using the 2007 census, the ideal per district population for Camarines Sur is 338,764. The populations of the proposed districts swing from this ideal by a high of positive 29.6% (Third District) to a low of negative 47.9% (First District). This means that the smallest proposed district (First District) is underpopulated by nearly 50% of the ideal and the biggest proposed district (Third District) is overpopulated by nearly 30% of the ideal.
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> The resulting vote undervaluation (for voters in the disfavored districts) and vote overvaluation (for voters in the First District) fails even the most liberal application of the constitutional standards. Votes in the proposed First District are overvalued by more than 200% compared to votes from the Third, Fourth, and Fifth Districts and by more than 60% compared to votes in the Second District. Conversely, votes from the Third, Fourth, and Fifth Districts are undervalued by more than 200% compared to votes in the First District while those in the Second District suffer more than 60% undervaluation.
>
> Proportional representation in redistricting does not mean exact numbers of population, to the last digit, for every legislative district. However, under the assailed RA 9716, the variances swing from negative 47.9% to positive 29.6%. Under any redistricting yardstick, such variances are grossly anomalous and destructive of the concept of proportional representation. In the United States, the Supreme Court there ruled that a variance of even less than 1% is unconstitutional in the absence of proof of a good faith effort to achieve a mathematically exact apportionment.[21]

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

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

At any rate, we have already discussed in the assailed Decision that the Constitution **does not** prescribe absolute proportionality in distributing seats to party-lists, organizations, or coalitions. On the contrary, Congress is given a wide latitude of discretion in setting the parameters for determining the

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[21] *Id.* at 643-644.

actual volume and allocation of party-list representation in the House of Representatives. Section 5(1), Article VI of the Constitution pertinently ordains:

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

BANAT further elucidates:

> x x x The allocation of seats under the party-list system is governed by the last phrase of Section 5(1), which states that the party-list representatives shall be "those who, as provided by law, shall be elected through a party-list system," **giving the Legislature wide discretion in formulating the allocation of party-list seats.** Clearly, **there is no constitutional requirement for absolute proportional representation in the allocation of party-list seats in the House of Representatives.**[22] (Emphasis added)

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

> Consider the **three-seat limit**. This ensures the entry of various interests into the legislature and bars any single party-list from dominating the party-list representation. Otherwise, the rationale behind party-list representation in Congress would be defeated. But viewed from a different perspective, **this safeguard dilutes, if not negates, the number of votes that a party-list party, organization, or coalition obtains.**
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> To illustrate, ACT-CIS garnered 2,651,987 votes or 9.51% of the votes cast under the party-list system in the recently concluded elections which would have yielded it six (6) seats in Congress. Otherwise stated, ACT-CIS had votes in excess of what was necessary for it to be awarded three (3) seats in Congress. Yet instead of considering these votes as wastes or a form of disenfranchisement against its voters, the Court does not consider this as a deviation from the "one person, one vote" principle.
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> Consider also the **two-tiered seat allocation**. This serves to maximize representation and fulfil the 20% requirement under Section 5 (1), Article VI of the *Constitution*. Seen in a different light, however, this arithmetical allocation in practice **inflates** the weight of each of the votes considered in the second round, *as far as the non-two percenters are concerned*, but **deflates** the weight of each of the votes considered in the second round, *as regards the two-percenters*. This is because the two-

[22] Supra note 2 at 767-768.

> percent (2%) vote-threshold needed to guarantee a seat in the House of Representatives **would definitely be more than the votes it would take to earn an additional seat**, whether we apply petitioners' proposal or the doctrine in *BANAT*.[23] (Emphases added)

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

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

> x x x The Court takes judicial notice of the fact that, thereafter, petitioner ANGKLA was proclaimed as a winning party-list organization in the 2013 and 2016 party-list elections. On the other hand, SBP garnered enough votes to secure a congressional seat in 2016.
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> Petitioners ANGKLA and SBP had therefore benefited from the *BANAT* doctrine in the previous elections. In fact, SBP itself, being among the winning party-list groups in the 2016 elections impleaded as respondent in ***An Waray v. COMELEC***, even defended the application of the *BANAT* formula, *viz.*:
>
> ***There was no grave abuse of discretion***
>
> 13. It is indisputable that the COMELEC was merely performing its duties when it adhered to the formula set forth by the Honorable Court. It is fundamental that judicial decisions applying or interpreting the law become part of the legal system of the Philippines. It becomes law of the land. The COMELEC was therefore not only right, it was duty bound to implement the formula from the *Banat Decision*.
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> 14. Contrary to the assertions of the Petitioners, the COMELEC would have instead committed grave abuse of discretion *if it had* implemented the formula which the Petitioners advanced, for to do so would be in direct contravention of the edict of this Honorable Court, as set forth in the *Banat Decision*. x x x
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> x x x x
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> 15. x x x It bears emphasis that the Petitioners have not claimed, for indeed they cannot, that the COMELEC failed to properly apply the formula set forth in the *Banat Decision*. They

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

only claim that their formula is better. As has been shown, this is not the case. The Petitioners' formula, far from being better, is susceptible to violations of the law.

x x x x

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

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

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

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

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

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

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

Petitioners admit that there is a substantial distinction between two-percenters and non-two-percenters and agrees that the former should be given

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

preference in the form of a guaranteed seat. But they nevertheless claim that such preference should be limited to the first round of seat allocation; when it comes to the allocation of the additional seats, the votes of the two-percenters should first be reduced by 2%.

We do not agree.

The intention behind the proviso is clear – **only the two-percenters were supposed to participate in the second round of seat allocation and with full votes at that.** This can be deduced from the language of the proviso which **originally** allocated seats only to those **"garnering more than two percent (2%) of the votes."**

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

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

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

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

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[25] 396 Phil. 419 (2000).
[26] 452 Phil. 899 (2003).
[27] 519 Phil. 644 (2006).
[28] 549 Phil. 767 (2007).
[29] (2) **The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list.** For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

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

> Petitioners foist the idea that **only the votes of the two-percenters were counted and considered in the first round.** x x x
>
> x x x x
>
> Nothing is farthest from the truth. **All votes were counted, considered, and used during the first round of seat allocation, not just those of the two-percenters.** But in the end, the non-two-percenters simply did not meet the requisite voting threshold to be allocated a guaranteed seat.
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> As correctly argued by the OSG, the system of counting pertains to two (2) different rounds and for two (2) different purposes: the **first round** is for purposes of applying the **2% threshold** and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the **second round** is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected *via* a party-list system, thus, seats are computed **in proportion to a party-list's total number of votes.**
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> Such is the current state of the party-list system elections. Since the system does not have a defined constituency as in district representation, elections are won by hurdling thresholds, not by sheer plurality of votes. Congress deemed it wise to set two (2) thresholds for the two (2) rounds of seat allocation. Each party-list earns a seat each time they hurdle the threshold in each round. But to clarify, **each vote is counted only once** for both rounds.
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> In the first round, party-lists receiving at least 2% of the total votes cast for the party-list system are entitled to one seat. In determining whether a party-list has met the proportional threshold, its percentage number of votes is computed, as follows:
>
> $$\frac{\text{Number of votes obtained by a Party-list}}{\textbf{Total number of votes cast under the party-list system}}$$
>
> The **"total number of votes cast under the party-list system,"** the very divisor of the formula, the very index of proportionality, requires that **all** votes cast under the party-list system be counted and considered in allocating seats in the first round, be it in favor of a two-percenter or a non-two-percenter. **This only goes to show that all votes were counted and considered in the first round.** Just because the non-two-percenters were not allocated a guaranteed seat does not mean that their votes were accorded lesser weight, let alone, disregarded. It simply means that they did not reach the proportional threshold in the first round.
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> x x x x

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

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

> For better appreciation, assume that party-list X garnered exactly 2% of the votes cast for the party-list system. Indubitably, it is guaranteed a seat in the first round of allocation. For the second round, its 2% vote will still be intact and will serve as the multiplier to the remaining number of seats after the first round of distribution.
>
> In petitioners' proposal, however, a 2% deduction will be imposed against party-list X before proceeding to the second round. This would result in X falling to the bottom of the ranking with zero percent (0%) vote, dimming its chances, if not disqualifying it altogether, for the second round. This is **contrary to the language of the statute which points to proportionality in relation to the TOTAL number of votes received** by a party, organization, or coalition in the party-list election, and the **intention** behind the law **to acknowledge the two-percenters' right to participate in the second round of seat allocation for the additional seats.**[31] (Emphases added)

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

> (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: *Provided*, That those garnering ~~more than two percent (2%) of the~~ votes shall be entitled to additional seats in proportion to their ~~*total number of*~~ votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.
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> x x x x

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

> x x x x
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> 3. Votes amounting to two percent (2%) of the total votes cast for the party-list elections obtained by each of the participating parties,

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

organizations, and coalitions should then be deducted from the total votes of each of these party-list groups that have been entitled to and given guaranteed seats.

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

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

x x x x

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

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

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

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

All told, the idea of the petitioners and the dissents on what is fair and equitable is simply **not** what was legislated. Indeed, there are infinite methods of allocating additional seats which may be considered fair, equitable, and proportional. But surely, it is not for the Court to recalibrate the formula for the party-list system to obtain the "broadest representation possible" and make

it seemingly less confusing and more straightforward. This is definitely a question of wisdom which the legislature alone may determine for itself. Thus, until RA 7941 is amended, Section 11(b) as outlined in ***BANAT*** remain to be the applicable law.

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

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

see separate dissenting opinion

ALEXANDER G. GESMUNDO
Chief Justice

I reiterate my separate concurring opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

I reiterate my concurring opinion in the main decision.

MARVIC M.V.F. LEONEN
Associate Justice

I reiterate my separate Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

I join the Separate Dissenting Opinion of Chief Justice Gesmundo.

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

I reiterate my dissenting opinion

RODIL V. ZALAMEDA
Associate Justice

I reiterate my concurring and dissenting opinion

MARIO V. LOPEZ
Associate Justice

I join the separate opinion of J Zalameda.

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

Love separate dissenting Opinion!

JHOSEP Y. LOPEZ
Associate Justice

See separate concurring and dissenting opinion

~~(on official leave)~~

JAPAR B. DIMAAMPAO
Associate Justice

I join the dissent of CJ Gesmundo

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice