G.R. No. 246816 (*ANGKLA: Ang Partido Ng Mga Pilipinong Marino, Inc. (ANGKLA), and Serbisyo Sa Bayan Party (SBP), Petitioners v. Commission on Elections (sitting as the National Board of Canvassers), Chairman Sheriff M. Abas, Commissioner Al A. Parreno, Commissioner Luie Tito F. 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), Petitioner-in-Intervention*).

Promulgated:

December 7, 2021
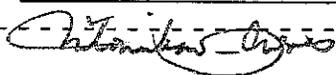
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SEPARATE DISSENTING OPINION

LOPEZ, J., J.:

In their motion for reconsideration, while petitioners prayed for the declaration of unconstitutionality of Section 11(b) of Republic Act No. 7941 (*R.A. No. 7941*)[1] pertaining to the allocation of additional seats, the essence of their motion, which echoes their petition, seeks to revisit the formula provided in the case of *BANAT v. COMELEC*[2] (*Banat* formula). They proposed to deduct the fraction of votes obtained by parties that obtained two percent (2%) of the votes cast for the party-list election, which have already been counted in the first round of seat allocation when it comes to the distribution of the remaining number of seats allocated for the party-list representatives. Thereafter, the votes shall be re-ranked and the remaining seats be distributed in accordance with this ranking.

The petitioners' claim is anchored on the alleged double counting votes obtained by parties that already garnered a guaranteed seat, in the distribution of additional seats.

I vote to grant the petitioners' motion for reconsideration.

The process for the distribution of seats for party-list representatives as adopted by the Commission on Elections (COMELEC) involves double counting of votes. However, it must be clarified that this is not brought by the phrase "seats in proportion to their total number of votes" under Section 11(b) of R.A. No. 7941; rather, it is the result of treating the 2% threshold as a tool to determine the number of guaranteed seats, which number, in turn, is used

[1]   AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR, March 3, 1995.
[2]   *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*, 604 Phil. 131 (2009).

as a basis for the distribution of additional seats. As will be discussed, this approach violates the mandate for proportional representation, neglects the principle of "uniform and progressive ratio" adopted by the Constitution, and goes against the republican nature of our State.

Section 5, Article VI of the 1987 Constitution provides the total number of seat allocation for party-list representatives as follows:

> SECTION 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a **uniform and progressive ratio**, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.
>
> (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.
>
> x x x[3]

Following the numbers mentioned under the 1987 Constitution, the seats allocated for party-list representatives was pegged at 50, being 20% of 250, which is the total number of representatives composing the House of Representatives. The constitutional provision, translated into a mathematical formula, is written as follows:

$$\frac{\text{No. of district representatives}}{.80} \times .20 = \text{No. of party-list representatives}[4]$$

This formulation means that any increase in the number of district representatives, as may be provided by law, will necessarily result in a corresponding increase in the number of party-list seats.[5]

As time went by, districts were re-apportioned, which resulted into the increase in the number of district representatives. With this, a corresponding increase in the number of party-list representatives necessarily followed. For the 2019 National and Local Elections (*2019 elections*), the number of district

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3   Emphasis supplied.
4   *Veterans Federation Party v. Commission on Elections*, 396 Phil. 419, 436 (2000).
5   *Id.*

representatives was 245. Following the formula, the number of party-list representatives is computed as follows:

$$\frac{245}{.80} \times .20 = 61.25$$

Disregarding the fraction of .25, a total of 61 seats were allotted to party-list representatives during the 2019 elections.

On May 22, 2019, the National Board of Canvassers (NBOC) promulgated NBOC Resolution No. 004-195 declaring the winning party-list groups in the May 13, 2019 elections. Based on National Canvass Report No. 86 and adhering to the Court's pronouncement in *BANAT*, the COMELEC distributed sixty-one (61) congressional seats among the following parties, organizations, and coalitions taking part in the May 13, 2019 party-list election, *viz.*:[6]

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES	SEATS
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	ACT CIS	2,651,987	9.51	3
2	BAYAN MUNA	BAYAN MUNA	1,117,403	4.01	3
3	AKO BICOL POLITICAL PARTY	AKO BICOL	1,049,040	3.76	2
4	CITIZENS BATTLE AGAINST CORRUPTION	CBAC	929,718	3.33	2
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	ANG PROBINSIYANO	770,344	2.76	2
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	IPACMAN	713,969	2.56	2
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44	2
8	PROBINSYANO AKO	PROBINSYANO AKO	630,435	2.26	2

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[6]   *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. v. Commission on Elections*, G.R. No. 246816, September 15, 2020.

9	COALITION OF ASSOCIATION OF SENIOR CITIZENS IN THE PHILIPPINES, INC.	SENIOR CITIZENS	516,927	1.85	1
10	MAGKAKASAMA SA SAKAHAN, KAUNLARAN	MAGSASAKA	496,337	1.78	1
11	ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES	APEC	480,874	1.72	1
12	GABRIELA WOMEN'S PARTY	GABRIELA	449,440	1.61	1
13	AN WARAY	AN WARAY	442,090	1.59	1
14	COOPERATIVE NATCCO NETWORK	COOP-NATTCO	417,285	1.5	1
15	ACT TEACHERS	ACT TEACHERS	395,327	1.42	1
16	PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC.	PHILRECA	394,966	1.42	1
17	AKO BISAYA, INC.	AKO BISAYA	394,304	1.41	1
18	TINGOG SINIRANGAN	TINGOG SINIRANGAN	391,211	1.4	1
19	ABONO	ABONO	378,204	1.36	1
20	BUHAY HAYAAN YUMABONG	BUHAY	361,493	1.3	1
21	DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH	DUTERTE YOUTH	354,629	1.27	1
22	KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING	KALINGA	339,655	1.22	1
23	PWERSA NG BAYANING ATLETA	PBA	326,258	1.17	1
24	ALLIANCE OF ORGANIZATIONS, NETWORKS, AND ASSOCIATIONS OF THE PHIIPPINES	ALONA	320,000	1.15	1
25	RURAL ELECTRIC CONSUMERS AND BENEFICIARIES OF DEVELOPMENT AND ADVANCEMENT, INC.	RECOBODA	318,511	1.14	1

26	BAGONG HENERASYON	BH (BAGONG HENERASYON)	288,752	1.04	1
27	BAHAY PARA SA PAMILYANG PILIPINO, INC.	BAHAY	281,793	1.01	1
28	CONSTRUCTION WORKERS SOLIDARITY	CWS	277,890	1	1
29	ABANG LINGKOD, INC.	ABANG LINGKOD	275,199	0.99	1
30	ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION COOPERATION HARMONY TOWARDS EDUCATIONAL REFORM	A TEACHER	274,460	0.98	1
31	BARANGAY HEALTH WELLNESS	BHW	269,518	0.97	1
32	SOCIAL AMELIORATION AND GENUINE INTERVENTION ON POVERTY	SAG IP	257,313	0.92	1
33	TRADE UNION CONGRESS PARTY	TUCP	256,059	0.92	1 .
34	MAGDALO PARA SA PILIPINO	MAGDALO	253,536	0.91	1
35	GALING SA PUSO PARTY	GP	249,484	0.89	1
36	MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION, INC.	MANILA TEACHERS 1	249,416	0.89	1
37	REBOLUSYONARONG ALYANSA MAKABANSA	RAM	238,150	0.85	1
38	ALAGAAN NATIN ATING KALUSUGAN	ANAKALUSUGAN	237,629	0.85	1
39	AKO PADAYON PILIPINO	AKO PADAYON	235,112	0.84	1
40	ANG ASOSASYON SANG MANGUNGUMA NGA BISAYA0OWA MANGUNGUMA, INC.	AAMBIS-OWA	234,552	0.84	1
41	KUSUG TAUSUG	KUSUG TAUSUG	228,224	0.82	1
42	DUMPER PHILIPPINES TAXI	DUMPER PTDA	223,199	0.8	1

	DRIVERS ASSOCIATION, INC.				
43	TALINO AT GALING PILIPINO	TGP	217,525	0.78	1
44	PUBLIC SAFETY ALLIANCE FOR TRANSFORMATION AND RULE OF LAW	PATROL	216,653	0.78	1
45	ANAK MINDANAO	AMIN	212,323	0.76	1
46	AGRICULTURAL SECTOR ALLIANCE OF THE PHILIPPINES	AGAP	208,752	0.75	1
47	LPG MARKETERS ASSOCIATION, INC.	LPGMA	208,219	0.75	1
48	OFW FAMILY CLUB, INC.	OFW FAMILY	200,881	0.72	1
49	KABAUKAT NG MAMAMAYAN	KABAYAN	198,571	0.71	1
50	DEMOCRATIC INDEPENDENT WORKERS ASSOCIATION	DIWA	196385	0.7	1
51	KABATAAN PARTY LIST	KABATAAN	195,837	0.7	1

The seat allocation was arrived at using the *Banat* formula that prescribed the following procedure:

> 1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

> 2. 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 guaranteed seat each.

> 3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.

> 4. Each party, organization, or coalition shall be entitled to not more than three (3) seats.[7]

The first procedure is a necessary requirement in order to determine which of the party-list that participated in the election should be entitled to the limited number of party-list seats allotted by the Constitution. The second

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[7] *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections, supra* note 2, at 162.

and fourth procedures are explicitly provided under R.A. No. 7941, pursuant to the delegation accorded by the Constitution.

As such, while the first, second and fourth procedures may very well find strong moorings under the Constitution and R.A. No. 7941, the third procedure, prescribing the distribution of additional seats, necessitates a second look.

In *Banat*, the procedure for the distribution of the additional number of seats was explained as follows:

> x x x There are two steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats, 38, which is the difference between the 55 maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed. We distributed all of the remaining 38 seats in the second round of seat allocation. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled.[8]

This procedure, while it appears to be a simplified approach, needs a closer examination.

Section 2 of R.A. No. 7941 declares the State policy for the election of party-list representatives, to wit:

> **Sec. 2. Declaration of Policy.** – The State shall promote **proportional representation** in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.[9]

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8   *Id.* at 163.
9   Emphasis supplied.

In applying the system of proportional representation, Sections 11 and 12 of R.A. No. 7941 prescribe the parameters in the distribution of seats for winning party-list representatives as follows:

Section 11. *Number of Party-List Representatives.* x x x

In determining the allocation of seats for the second vote, the following procedure shall be observed:

(a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

(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.

Section 12. *Procedure in Allocating Seats for Party-List Representatives.* The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the total nationwide votes cast for the party-list system.

Under proportional representation, a party's share (percentage) of its seats in the legislature exactly or approximately equals its share of the popular vote nationwide.[10] This concept is mirrored by Section 12 of R.A. No. 7941 when it mandated the distribution of seats in accordance with the percentage of votes obtained by a party in relation to the total nationwide votes cast for the party-list system. This concept of proportional representation is not, however, absolute as it is qualified by the 2% threshold and the 3-seat limit.

A reading of Section 11(b) of R.A. No. 7941 would show that it contains two parts. The first part determines the threshold percentage of votes that a party must obtain to be entitled to a seat, while the second part pertains to the proportional allocation of additional seats based on the total number of votes they obtained.

Petitioners impress upon this Court that this procedure results in the double counting of votes of those parties that garnered 2% of the votes cast for the party-list system. This is because under the second part of Section 11(b), it is still the totality of votes received by a party that is considered in the determination of additional seats of those parties that garnered 2% of the

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[10]   Sodaro, Michael, (2001). *Comparative Politics: A Global Introduction.* New York: McGrawHill, p. 208.

votes, despite the fact that the equivalent seat of the 2% threshold has already been used in determining a guaranteed seat.

I agree with the petitioners that the existing procedure or the distribution of party-list seats results in double counting; but not on the basis of the second part of Section 11(b). Rather, double counting occurs because of the purpose for which the 2% threshold was utilized.

I do not find the phrase "in proportion to their total number of votes" under the second part of Section 11(b) of R.A. No. 7941 as unconstitutional, when it comes to the distribution of additional seats. Proportional representation, as adopted in our party-list system, seeks an equivalent number of seats based on the total number of votes obtained by a party. Necessarily, whatever seat a party obtains must be the corresponding equivalent of the number of votes it obtained.

The first part of the assailed phrase under Section 11(b) of R.A. No. 7941 must, likewise, be considered, which reads: "That those garnering more than two percent (2%) of the votes x x x." This means that this provision pertains to a procedure for the determination of additional seats of those parties that already qualified for a first seat. Hence, this procedure separates those parties that acquired 2% of the votes from those that did not reach the 2% threshold. There is no violation of the equal protection clause in this case as it simply provides a procedure for determining additional seats whereby priority is given to those parties that reached the 2% threshold. The fact that they are given priority in the distribution of seats is simply a consequence of the Court's pronouncement in *Banat*, because it is no longer just the parties garnering more than 2% of the votes cast that would be entitled to a seat. With the objective of attaining the 20% allocation for party-list representatives, even those garnering less than 2% of the votes cast may be entitled to a seat. In filling up the 20% allocation, the advantage obtained by parties that reached the 2% threshold set by law, must not be bypassed. Thus, there exists a substantial distinction under this provision as the threshold amount determined by law serves to differentiate those that acquired 2% of the votes cast from those that were not able to do so. Ultimately, Section 11(b) of R.A. No. 7941 must be understood to refer to the computation of additional seats of parties that are given priority in the distribution of seats as it speaks of those that garnered more than 2% of the votes cast.

Nevertheless, double counting still occurs because of the purpose for which the 2% threshold was utilized.

In *Banat*, the distribution of additional seats is premised on the determination of the number of remaining available seats. In order to arrive at this number, the number of guaranteed seats are first determined and this is subtracted from the total number of seats allotted by the Constitution. In

determining the number of guaranteed seats, *Banat* ranks the parties and places in one group, the parties that garnered at least 2% of the votes cast for the party-list system. Resultantly, the allocation of additional seats becomes dependent on the number of additional seats to be distributed, which in turn is dependent on the number of guaranteed seats.

The problem in this approach lies in the resulting effect wherein the parties obtaining 2% of the votes cast are not actually awarded their first seat in the first round of seat allocation. This is because the 2% threshold *is still to be used as a tool to determine the number of guaranteed seats.* In doing so, the total seats allotted for party-list representatives are artificially filled with guaranteed seats, but no actual distribution of seats yet occur. This is a violation of the first part of Section 11(b) of R.A. No. 7941, which states "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." This simply means that those obtaining 2% of the total votes cast for the party-list system is entitled to their first seat. Nowhere from the text of the law was it stated that the 2% shall be used for the purpose of determining the number of guaranteed seats. The 2% threshold already provides an equivalent seat that must be definitively allocated.

By using the 2% threshold as a tool to determine the number of guaranteed seats for which the number of additional seats will be computed, the totality of votes of a party that qualified for the threshold are utilized twice: *firstly*, in the determination of which party is entitled to a guaranteed seat, and *secondly*, in the determination of the number of guaranteed seats, from which the number of additional seats available, is computed. Looking at them as separate processes, there appears to be no double counting of votes because the use of the totality of votes appears to fulfill different purposes. However, looking at them as part of a whole process, double counting readily reveals itself.

As the *Banat* formula uses the 2% threshold to determine the number of guaranteed seats, this results into the allocation of a seat that is hung above the totality of seats waiting to be filled. However, this seat does not fall to the vacancy until after the distribution of additional seats. At this stage, the totality of the votes obtained by a party has already been counted and determined to be equivalent to 1 seat. There appears to be no contradiction at this stage. However, in order for the seats to fall down and fill the vacancy, the remaining number of seats must be distributed using the totality of votes obtained by a party. This is where the actual distribution of seats occurs and as this happens, the guaranteed seats that were left hanging would eventually fall down to take their place and add up to the additional seats that a party is entitled to. When the seats add up, the 2% threshold that used the totality of votes and the distribution of the remaining seats available that also used the totality votes, would comprise the 20% seat allocation for party-list representatives. In such a case, double counting of votes clearly occurs.

Double counting of votes violates the republican nature of our State.[11] Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority.[12] The exercise of the right of suffrage which, in the consensus of political philosophers of consequence, is the bedrock of all republican institutions.[13] Indeed, each time the enfranchised citizen goes to the polls to assert this sovereign will, that abiding credo of republicanism is translated into living reality.[14] By not being able to count the votes of the electorate in a proper manner, the composition of the government cannot be said to reflect their will. Republicanism must not simply be understood from the point of view of the exercise of the right to suffrage. The effects of this exercise must, likewise, be felt through the proper appreciation of votes and reflected in the composition of elected government officials.

It must be clarified that the cause of the double counting of votes is not brought about by the use of the total votes in determining the additional seats that a party-list is entitled to. The anomaly lies in the waiting game as to when the 2% threshold would be equated with 1 seat. R.A. No. 7941 expressly provides an equivalency of *2% of votes : 1 seat*. This is the ratio that supports the system of proportional representation, and for which the distribution of additional seats must be computed. To simply bypass this ratio after knowing the parties entitled to a seat, and instead use the threshold to determine the number of guaranteed seats, would go against the very electoral system for which representation under the party-list system is anchored.

In proportional representation, the votes obtained by a party must be allotted with a corresponding equivalent seat. Thus, to properly determine the proportion of votes and seats, the best tool to use would be ratio equivalents. Indeed, R.A. No. 7941 already prescribes a ratio of *2% of the total votes cast : 1 seat*. It bears emphasis that this serves as an equivalence and not just determines the number of guaranteed seats. Utilizing this ratio mirrors the standard used by the Constitution in the determination of the number of district representatives in a geographic location, which is on the basis of a "uniform and progressive ratio." While said standard makes reference to district representatives, nothing prevents this Court from adopting the said standard in the determination of seats that a party-list can obtain considering that both district and party-list representatives serve as representatives of a particular group of individuals. As such, if a particular population entitles them to one district representative, then a particular population (as determined by votes) of the marginalized or underrepresented sectors, among all the

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[11]   Art. II, Sec. 1 of the Constitution provides:
         SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.
[12]   *Moya v. Del Fierro*, 69 Phil. 199, 204 (1939).
[13]   See *People v. San Juan*, 130 Phil. 515, 522 (1968).
[14]   *Id.*

marginalized or underrepresented sectors, must also entitle them to one representative.

While the 2% threshold entitles a party-list to 1 seat, it does not provide a one-to-one correspondence for each seat that a party-list may be entitled to. This is because a party-list does not need to secure an additional 2% of the votes cast for party-list system in order to obtain a second seat. As illustrated in *Veterans Federation Party v. COMELEC*:[15]

> One proposed formula is to allocate one additional seat for every additional proportion of the votes obtained equivalent to the two percent vote requirement for the first seat. Translated in figures, a party that wins at least six percent of the total votes cast will be entitled to three seats; another party that gets four percent will be entitled to two seats; and one that gets two percent will be entitled to one seat only. This proposal has the advantage of simplicity and ease of comprehension. Problems arise, however, when the parties get very lop-sided votes -- for example, when Party A receives 20 percent of the total votes cast; Party B, 10 percent; and Party C, 6 percent. Under the method just described, Party A would be entitled to 10 seats; Party B, to 5 seats and Party C, to 3 seats. Considering the three-seat limit imposed by law, all the parties will each uniformly have three seats only. We would then have the spectacle of a party garnering two or more times the number of votes obtained by another, yet getting the same number of seats as the other one with the much lesser votes. In effect, proportional representation will be contravened and the law rendered nugatory by this suggested solution. Hence, the Court discarded it.[16]

Indeed, to adopt such an approach would negate the concept of proportional representation. Moreover, it fails to take into consideration the evolving composition of the party-list representatives in the House of Representatives. With this approach, as the seats are filled up, the corresponding threshold percentage to obtain a seat will be stagnant at 2% per seat, despite the decreasing number of available seats as they are filled.

With the 3-seat cap, the 2% threshold, the total votes obtained, and the number of seats to be filled taken into consideration, I propose a formula that would reflect a Philippine style of proportional representation.

As the distribution of seats requires a proportion, it is important to first determine the ratio equivalent for which additional seats may be distributed. The ratio provided by law is *2% of the votes :1 seat*. From this, the next question would be: what is the threshold percentage vote for a party to be entitled to 2 seats? Afterwards, with the 3-seat cap, the question would be: what is the threshold percentage vote for a party to be entitled to 3 seats?

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15 *Supra* note 4.
16 *Id.* at 443.

As mentioned, *2% of the votes : 1* seat, as equivalent to *4% of the votes : 2 seats*, does not follow proportional representation. This also fails to take into consideration the number of seats allotted for party-list representatives.

To be sure, the ratio equivalent of *2% of the votes : 1 seat* means that for a specific seat allocation for party-list representatives, a party must obtain 2% of the votes in order to be entitled to a seat. By using the threshold vote and its equivalent seat, the ratio equivalent is presented from the perspective of filling up a seat. However, looking at the other side of the equation, the ratio equivalent can also be presented from the perspective of the number of seats available to be filled. By taking this perspective, it can be discerned that the ratio of *2% threshold : 1 seat to be filled* is actually equivalent to the ratio of *2% threshold : seat allocation for party-list representatives*. With this ratio equivalent, the threshold percentage necessary to be entitled to a second and third seat would be arrived at by using the number of seats available as a variable in the equation. By using this variable, we would be able to arrive at an equivalence whereby as the number of seats are filled, the corresponding threshold percentage for the second and third seats is thereby adjusted accordingly.

By using this approach, the additional number of seats for those garnering more than 2% of the votes cast for the party-list will be determined based on a specific threshold percentage for each additional seat. Throughout the process, the threshold percentage required to obtain a second and third seat is adjusted based on the remaining number of seats to be filled. The threshold percentage for the first seat and the adjusted threshold percentage for the second seat will then be added to arrive at the percentage vote required for a party to be entitled to two seats. Thereafter, the threshold percentage for entitlement to a third seat will be determined on the basis of the threshold percentage arrived at in order to obtain a second seat. The threshold percentages for entitlement to a first, second and third seat will then be added in order to arrive at the threshold percentage that would entitle a party to 3 seats.

This process prevents double counting of votes because the totality of the votes obtained by a party is utilized only once. Unlike in *Banat* where it is used to determine the number of guaranteed seats, as well as in the allocation of the remaining seats, this approach definitively allocates the equivalent seat of the total votes obtained by a party. By setting threshold percentages at every stage of seat allocation, the totality of votes obtained by a party will be equated with corresponding seats, and is not utilized for a second time to determine the number of available seats. The determination of threshold percentages will now serve as the yardstick in setting the equivalent of the percentage vote obtained by a party in order to be entitled to additional seats.

Thus, I propose the following procedures for seat allocation of party-list representatives:

1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

2. 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. This first seat shall be allocated to party-list that reached the 2% threshold.

3. The number of seats remaining after the first seat is allocated shall be determined by deducting the number of seats that has been allocated, from the total number of seats allocated for party-list representatives.

4. The distribution of additional seats to parties that obtained more than 2% of the votes cast for the party-list system shall be prioritized based on a threshold percentage.

> The threshold percentage to obtain a second seat for the remaining seats shall be computed on the basis of the ratio equivalent of the *total number of seats available : 2% threshold.* In the 2019 elections, this is *61 seats : 2% threshold.* The threshold percentage obtained in this round shall then be added to the 2% threshold in the allocation of a first seat. The parties that obtain the sum threshold percentage will be entitled to 2 seats. The seats will be allocated and the remaining number of seats available will be determined by deducting the totality of seats distributed up to this round, from the total number of seats allocated for party-list representatives.

> For the distribution of a third seat for the remaining seats, the threshold percentage shall be computed on the basis of the ratio equivalent of the *seats available for allocation of second seats : threshold percentage arrived at in the allocation of second seats.* The threshold percentage arrived at in this round shall then be added to the 2% threshold that was used in the allocation of the first seat and the threshold percentage arrived at in the allocation of second seats. The parties that obtain the sum threshold percentage under this round will be entitled to 3 seats. The seats will be allocated and the remaining number of seats available will be determined by deducting the totality of seats distributed up to this round, from the total number of seats allocated for party-list representatives.

5. In the event that the 20% allocation has not yet been filled, the remaining seats shall be distributed in proportion to the votes obtained by a party. For the parties that obtained at least 2% of the votes cast for the party-list, since a fraction of their votes has already been equated with seats by reaching the corresponding threshold percentages, such fraction of their votes should be deducted from their percentage votes in filling up the 20% allocation for party-list representatives. The remaining number of seats shall then be distributed to the parties that are next in rank until the same are completely filled.

Applying the above proposal, the allocation of the first seat in the 61 seats available for party-list representatives during the 2019 elections, as mentioned in the Decision of this case, shall be as follows:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES	SEATS
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	ACT CIS	2,651,987	9.51	1
2	BAYAN MUNA	BAYAN MUNA	1,117,403	4.01	1
3	AKO BICOL POLITICAL PARTY	AKO BICOL	1,049,040	3.76	1
4	CITIZENS BATTLE AGAINST CORRUPTION	CBAC	929,718	3.33	1
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	ANG PROBINSIYANO	770,344	2.76	1
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	1PACMAN	713,969	2.56	1
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44	1
8	PROBINSYANO AKO	PROBINSYANO AKO	630,435	2.26	1
	Total				8

With this, 8 party-lists are entitled to a first seat. This number shall be deducted from the total number of seats available, which is 61. This results into 53 remaining additional seats.

For the allocation of additional seats, there is a need to determine the percentage threshold needed to qualify for a second seat on the basis of a proportion formula, as follows:

Number of seats available : x% =Total number of seats for the first allocation : 2%

In this formula, the variable "x" represents the threshold percentage that needs to be computed in order to arrive at the percentage of vote that a party must additionally obtain in order to be entitled to a second seat based on the number of seats available. The proportion in this formula, which are the number of seats available and the 2% are called "extremes," while the x% and the total number of seats for the first allocation are called "means."

Considering that the number of seats available has already been determined, which is 53, after the seats of those that obtained 2% of the votes have been deducted from the total number of seats allocated for party-list, then the application of the equation will be as follows:

53 seats : x% = 61 seats : 2%

Following the computation for a proportion formula, the value of the "means" will have to be transposed and expressed to be multiplied. The same will also have to be done to the "extremes," thereby leading to the following equation:

$$53 \text{ seats} : x\% = 61 \text{ seats} : 2\%$$
$$x\% \ (61 \text{ seats}) = 2\% \ (53 \text{ seats})$$
$$x\% \ (61 \text{ seats}) = .02 \ (53 \text{ seats})$$
$$x\% \ (61 \text{ seats}) = 1.06 \text{ seats}$$

As we are looking for the value of "x," we will have to isolate it on one side of the equation. This is done firstly, by dividing the equation with 61 seats in order to cancel the 61 seats that accompany "x"% on the left side of the equation. Afterwards, the % in the variable "x"% will have to be eliminated by converting it into its fractional equivalent and multiplying the equation to 100% to cancel out the % that accompanies the variable "x." The resulting equivalent of "x," which is the threshold percentage for a second seat will then be arrived at as follows:

$$\frac{x\% \ (\cancel{61 \text{ seats}})}{\cancel{61 \text{ seats}}} = \frac{1.06 \cancel{\text{ seats}}}{61 \cancel{\text{ seats}}}$$
$$x\% = .017377$$

$$[\frac{x}{100\%} = .017377]100\%$$

$$\frac{x \, (\cancel{100\%})}{\cancel{100\%}} = .017377(100\%)$$
$$x = 1.7377\%$$

Based on this formula, the threshold percentage for the 53 seats available is arrived at 1.7377%. Adding the 2% threshold to obtain a first seat, then a party that obtains a total of 3.7377% of votes shall be entitled to 2 seats. The additional seats would then be allocated as follows:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES	SEATS
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	ACT CIS	2,651,987	9.51	2
2	BAYAN MUNA	BAYAN MUNA	1,117,403	4.01	2
3	AKO BICOL POLITICAL PARTY	AKO BICOL	1,049,040	3.76	2
4	CITIZENS BATTLE AGAINST CORRUPTION	CBAC	929,718	3.33	1
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	ANG PROBINSIYANO	770,344	2.76	1
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	1PACMAN	713,969	2.56	1
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44	1
8	PROBINSYANO AKO	PROBINSYANO AKO	630,435	2.26	1
	Total				11

With this, the total number of seats allocated is 11. Deducting this number from 61, the remaining number of seats would be 50. In determining whether any of these parties are entitled to an additional seat, another computation to determine the threshold percentage that would entitle a party to a third seat, is necessary. In doing so, the ratio equivalent to be used in the proportion formula is the ratio arrived at, in the allocation for a second seat, which is *53 seats : 1.7377% threshold.* Applying the same method as above described, the computation for a third seat is compressed as follows:

Number of seats available : x% = Total number of seats for the second allocation : 2%

$$50 \text{ seats} : x\% = 53 \text{ seats} : 1.7377\%$$

$$\frac{x\% (53 \text{ seats})}{53 \text{ seats}} = \frac{1.7377\% (50 \text{ seats})}{53 \text{ seats}}$$

$$[\frac{x}{100\%} = 0.016393]100\%$$

$$x = 1.6393\%$$

The threshold percentage for the 50 seats available is thus 1.6393%. By adding it with the 2% threshold for the first seat, and the 1.7377% threshold for the second seat, a party that obtains a total of 5.377% shall be entitled to 3 seats. The seats are then allocated as follows:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES	SEATS
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	ACT CIS	2,651,987	9.51	3
2	BAYAN MUNA	BAYAN MUNA	1,117,403	4.01	2
3	AKO BICOL POLITICAL PARTY	AKO BICOL	1,049,040	3.76	2
4	CITIZENS BATTLE AGAINST CORRUPTION	CBAC	929,718	3.33	1
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	ANG PROBINSIYANO	770,344	2.76	1
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	1PACMAN	713,969	2.56	1
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44	1
8	PROBINSYANO AKO	PROBINSYANO AKO	630,435	2.26	1
	TOTAL				12

9

By using this formula, the seats for those garnering at least 2% of the votes can already be allocated. Rather than using the 2% threshold to determine the number of guaranteed seats, which number in turn, will be used for the distribution of additional seats, it is now being applied and used as a basis for proportionately determining the allocation of additional seats. As such, each percentage of vote is equated with a corresponding proportion for the allocation of additional seats. This is consistent with the mandate of Section 12 of R.A. No. 7941 that allocation of seats should be done "proportionately according to the percentage of votes obtained by each party x x x."

The formula, thus, presents a definitive proportional seat allocation both for the first seat of those garnering 2% of the votes, and for the additional seats of those garnering more than 2% of the votes. Thus, for the 2019 elections, those obtaining 2% of the votes shall be entitled to 1 seat, those obtaining 3.7377% of the votes are entitled to two seats and those obtaining 5.377% are entitled to 3 seats.

Proceeding further, after determining the additional seats allocated to parties who obtained the 2% threshold, the remaining number of seats would be 49, which is the difference between the total number of seats reserved for party-list representatives, which is 61, and the allocated seats, which is 12. The 49 seats should then be filled by allocating the remaining seats to the party next in rank, until all the seats are completely filled.

It bears noting that in using the 2% threshold as the source in determining the allocation for the second and third seats, the votes obtained by a party, in relation to the total number of votes in the party-list, have already been considered. Consequently, as the percentage votes of parties that garnered at least 2% of the votes cast for the party-list system has already been allocated with their corresponding seat equivalents, the corresponding percentage votes that entitled them to these seats should already be deducted when it comes to filling up the remaining number of seats reserved for party-list representatives. This must be so because Section 12 of R.A. No. 7941 speaks of proportion according to the percentage of votes obtained by a party. As there has already been an allocation of seats in the portion of the percentage of votes obtained by a party, the proportion should now be based on the remaining percentage of votes that should be allocated to fill the remaining number of seats available.

After determining their rank, the seats reserved for party-list representatives will result in the following distribution of seats:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES	SEATS
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	ACT CIS	2,651,987	9.51 – 5.377% = 4.133%	3 (seat cap)
2	BAYAN MUNA	BAYAN MUNA	1,117,403	4.01- 3.7377 = .2723	2
3	AKO BICOL POLITICAL PARTY	AKO BICOL	1,049,040	3.76- 3.7377 = .0223	2
4	CITIZENS BATTLE AGAINST CORRUPTION	CBAC	929,718	3.33 – 2= 1.33	1 + 1 = 2
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	ANG PROBINSIYANO	770,344	2.76 – 2 = .76	1+1 = 2
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	IPACMAN	713,969	2.56 – 2 = .56	1
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44 – 2 = .44	1
8	PROBINSYANO AKO	PROBINSYANO AKO	630,435	2.26 – 2 = .26	1
9	COALITION OF ASSOCIATION OF SENIOR CITIZENS IN THE PHILIPPINES, INC.	SENIOR CITIZENS	516,927	1.85	1
10	MAGKAKASAMA SA SAKAHAN, KAUNLARAN	MAGSASAKA	496,337	1.78	1
11	ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES	APEC	480,874	1.72	1
12	GABRIELA WOMEN'S PARTY	GABRIELA	449,440	1.61	1
13	AN WARAY	AN WARAY	442,090	1.59	1
14	COOPERATIVE NATCCO NETWORK	COOP-NATTCO	417,285	1.5	1
15	ACT TEACHERS	ACT TEACHERS	395,327	1.42	1
16	PHILIPPINE RURAL ELECTRIC	PHILRECA	394,966	1.42	1

	COOPERATIVES ASSOCIATION, INC.				
17	AKO BISAYA, INC.	AKO BISAYA	394,304	1.41	1
18	TINGOG SINIRANGAN	TINGOG SINIRANGAN	391,211	1.4	1
19	ABONO	ABONO	378,204	1.36	1
20	BUHAY HAYAAN YUMABONG	BUHAY	361,493	1.3	1
21	DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH	DUTERTE YOUTH	354,629	1.27	1
22	KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING	KALINGA	339,655	1.22	1
23	PWERSA NG BAYANING ATLETA	PBA	326,258	1.17	1
24	ALLIANCE OF ORGANIZATIONS, NETWORKS, AND ASSOCIATIONS OF THE PHIIPPINES	ALONA	320,000	1.15	1
25	RURAL ELECTRIC CONSUMERS AND BENEFICIARIES OF DEVELOPMENT AND ADVANCEMENT, INC.	RECOBODA	318,511	1.14	1
26	BAGONG HENERASYON	BH (BAGONG HENERASYON)	288,752	1.04	1
27	BAHAY PARA SA PAMILYANG PILIPINO, INC.	BAHAY	281,793	1.01	1
28	CONSTRUCTION WORKERS SOLIDARITY	CWS	277,890	1	1
29	ABANG LINGKOD, INC.	ABANG LINGKOD	275,199	0.99	1
30	ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION COOPERATION HARMONY TOWARDS EDUCATIONAL REFORM	A TEACHER	274,460	0.98	1
31	BARANGAY HEALTH WELLNESS	BHW	269,518	0.97	1

32	SOCIAL AMELIORATION AND GENUINE INTERVENTION ON POVERTY	SAG IP	257,313	0.92	1
33	TRADE UNION CONGRESS PARTY	TUCP	256,059	0.92	1
34	MAGDALO PARA SA PILIPINO	MAGDALO	253,536	0.91	1
35	GALING SA PUSO PARTY	GP	249,484	0.89	1
36	MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION, INC.	MANILA TEACHERS 1	249,416	0.89	1
37	REBOLUSYONARONG ALYANSA MAKABANSA	RAM	238,150	0.85	1
38	ALAGAAN NATIN ATING KALUSUGAN	ANAKALUSUGAN	237,629	0.85	1
39	AKO PADAYON PILIPINO	AKO PADAYON	235,112	0.84	1
40	ANG ASOSASYON SANG MANGUNGUMA NGA BISAYA0OWA MANGUNGUMA, INC.	AAMBIS-OWA	234,552	0.84	1
41	KUSUG TAUSUG	KUSUG TAUSUG	228,224	0.82	1
42	DUMPER PHILIPPINES TAXI DRIVERS ASSOCIATION, INC.	DUMPER PTDA	223,199	0.8	1
43	TALINO AT GALING PILIPINO	TGP	217,525	0.78	1
44	PUBLIC SAFETY ALLIANCE FOR TRANSFORMATION AND RULE OF LAW	PATROL	216,653	0.78	1
45	ANAK MINDANAO	AMIN	212,323	0.76	1
46	AGRICULTURAL SECTOR ALLIANCE OF THE PHILIPPINES	AGAP	208,752	0.75	1
47	LPG MARKETERS ASSOCIATION, INC.	LPGMA	208,219	0.75	1
48	OFW FAMILY CLUB, INC.	OFW FAMILY	200,881	0.72	1
49	KABAUKAT NG MAMAMAYAN	KABAYAN	198,571	0.71	1

50	DEMOCRATIC INDEPENDENT WORKERS ASSOCIATION	DIWA	196385	0.7	1
51	KABATAAN PARTY LIST	KABATAAN	195,837	0.7	1
52	AKSYON MAGSASAKA - PARTIDO TINIG NG MASA	AKMA-PTM	191,804	0.69	1
53	SERBISYO SA BAYAN PARTY	SBP	180,535	0.65	1
54	ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC,	ANGKLA	179,909	0.65	1
55	AKBAYAN CITIZENS ACTION PARTY	AKBAYAN	173,356	0.62	1
	Total				61

In this round, CBAC and ANG PROBINSYANO obtained an additional seat each, since the difference, after deducting the threshold percentage that entitled them to a seat from the percentage votes they received, which is 1.33% and .76%, is high enough in the ranking of percentage votes throughout the process of filling up the entire allocation of 61 seats allotted to party-list representatives.

With this formula, AKMA-PTM, SBP, ANGKLA and AKBAYAN are entitled to 1 seat each. Resultantly, this formula opens for more representation in the party-list system, as more sectors will be represented in the House of Representatives. Moreover, by using ratio equivalents and anchoring the computation based on proportion, the threshold percentage for a second and third seat is specifically determined in the same manner that a first seat is awarded based on a specific threshold percentage. As the seats are filled and adjusted, so is the threshold percentage for additional seats. Given the limited number of seats allocated for party-list representatives, it is more in keeping with the principle of proportional representation, to adopt a formula whereby a change in the number of seats available should also result in the corresponding change in the threshold percentage that would entitle a party to a seat. This would also result in having a progressive ratio in the allocation of seats based on the votes obtained by a party.

As demonstrated, the proposed formula avoids the double counting of votes, adheres to the principle of proportional representation as embodied in the law, and prescribes a uniform and progressive ratio in the allocation of seats.

IN VIEW OF THE FOREGOING, I vote to grant the motion for reconsideration and set aside NBOC Resolution No. 004-195 for being a product of double counting of votes of parties that garnered at least 2% of the votes cast for the party-list. The cause of the double counting of votes, which is the treatment of the 2% threshold as a tool to determine the number of guaranteed seats, which number will be used in the distribution of additional seats, is unconstitutional.

JHOSEP Y. LOPEZ
Associate Justice