Ang Bagong Bayani v. COMELEC:[1] An Analysis of the Party List System

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I. INTRODUCTION

Politics in the Philippines is as involuted as an intra-uterine device, and its purpose, as the experience of the years has shown, is to prevent the conception of ideas or the realization of projects that will benefit the masses. This is why, again, like the operation of the intra-uterine device Philippine politics works in a secret but rather effective way of accomplishing what it is intended for it to accomplish.[2]

How tragic it is for a nation when its basic political structure is relegated to a comparison with a contraceptive which prevents not the conception of a child but that of fresh ideas, of new and radical policies, of renaissance leadership, and of the rebirth of a nation. This inability of the Philippine political system to foster proper and lasting change for the country has been attributed to the proliferation of patronage politics and an unenlightened electorate tempered by years under a dictatorship.

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1. G.R. Nos. 147589 & 147613 (June 26, 2001).
2. INDALECIO SOLIONGCO, TODAY A CONTEMPORARY FROM THE PAST: A COMPILATION OF WRITINGS OF INDALECIO SOLIONGCO – COLUMNIST MANILA CHRONICLE 117 (RENATO CONSTANTINO, FOUNDATION FOR NATIONALIST STUDIES ED.) (1991).

Prior to 1986, the Kilusang Bagong Lipunan (KBL), under the leadership of then President Marcos, exercised a monopoly over Philippine politics. The KBL was initially established to support President Marcos in preparing for the holding of elections for the Interim Batasang Pambansa or National Assembly, but evolved into a far-reaching political organization which also controlled local positions. Most of the then incumbent town mayors, formerly Liberal or Nacionalista members joined the KBL party to assure themselves of patronage and ran for reelection under the KBL banner.[3] Having control over the government from Malacanang to the Barangay Halls, any opposition party seemed like a lone voice in the wilderness, effectively stifling any form of dissent within the Executive and the Legislature and causing the system of checks-and-balances to flounder and fail.

It was these bitter memories under the single party system of the Marcos Regime that the Commissioners of the 1987 Constitutional Commission sought to reform the Philippine Party system. There were endless debates on what suited this country best. But in the end, the argument that the cultural and political diversity would be best put to use in a multi-party system rather than a two-party system or, more so, a single party system won out. It was pointed out that it would best embody the "People Power" sentiment that was prevalent after the 1986 People Power Revolution.[4]

So it was that representation which placed Congress under the microscope and was "reformed" into a two-part system of representation: *one*, traditional district representation and, *second*, sectoral representation. The sectoral representation or the Party-list system as it would be called, seeks to give underrepresented sectors i.e. labor, fisherfolk, peasants, women, youth, of Philippine society a chance to acquire a seat, or metaphorically, a voice in Congress.[5] In effect, voters would be given two votes for Congress: the first vote for district representatives — candidates who are individuals residing in the locality; and the second vote for a sectoral party — a party or organization which the voter deems to represent his interests, political beliefs or vocation. Ideally, traditional district representation would continue to be the battleground for established, traditional and well-funded parties while the

3. PHILIPPINE HISTORICAL ASSOCIATION, PHILIPPINE PRESIDENTS (100 years), at 228-29 (1999).
4. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 1-2. (Vitug, J., dissenting).
5. Divina Gracia Cabildo, The Party-List System: Removing Barriers to Fair and Effective Representation Towards a More Representative Government 22 (2000) (unpublished J.D. Thesis, Ateneo de Manila University Law School) (on file with the Ateneo Professional Schools Library) [hereinafter Cabildo].

party-list system would be allotted for less-renowned, non-traditional parties representative of underrepresented sectors of society.[6]

On March 3, 1995, RA 7941[7] was enacted by Congress as an enabling law for the Constitutional provision providing for a party-list system. In compliance with the Constitutional directive, it provides for the holding of party-list elections beginning May 1998.[8] Party list elections were held on May 1998 and 2001. Nevertheless, being a new system, birth pains attended its implementation.

II. FACTS OF THE CASE

The low turnout of the party-list votes during the 1998 elections should not be interpreted as a total failure of the law in fulfilling the object of this new system of representation. It should not be deemed a conclusive indication that the requirements imposed by RA 7941 wholly defeated the implementation of the system. Be it remembered that the party-list system, though already popular in parliamentary democracies, is still quite new in our presidential system. We should allow it some time to take root in the consciousness of our people and in the heart of our tripartite form of Republicanism.[9]

The 1998 Elections saw for the first time the implementation of the party-list system. At its heels was the case of *Veteran's Federation Party*,[10] where the Court ruled on issues involving the party-list system. It was a preliminary sojourn for the Court, delving into its mechanics and intricacies. It could well have been expected that the Court would be faced with more controversies involving this system as time goes by. Being "new to our Presidential system" and to "allow it some time to take root in the consciousness of our people" are pointers that the Court, as a matter of fact, established. Clearly, party-list issues had not yet been written in finis. Many issues would still be resolved as the system comes of age.

During the 2001 Elections, new controversies arose concerning the kind of parties under the coverage of RA 7941 and the supposed reservation of the party-list system to "marginalized and underrepresented" sectors of society. Thus, the case of *Ang Bagong Bayani* came to pass, but unlike the

6. JOAQUIN G. BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS 353-54 (1995). [hereinafter BERNAS, INTENT].

7. An Act Providing for the Election of Party-List Representatives through the Party-list system, and Appropriating Funds Therefor, Republic Act No. 7941 (1995).

8. Cabildo, *supra* note 5, at 23-24.

9. Veteran's Federation Party v. COMELEC, G.R. Nos. 136781, 136786 and 136795 (Oct. 6, 2000).

10. *Id.*

case of *Veteran's Federation Party* which dealt with matters of form, *Ang Bagong Bayani* went into a discussion hinged on substance.

A. *The Petitioners*

The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. It intends to make the marginalized and the underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of representative democracy. Thus, allowing all individuals and groups, including those which now dominate district elections, to have the same opportunity to participate in party-list elections would desecrate this lofty objective and mongrelize the social justice mechanism into an atrocious veneer for traditional politics.[11]

Right off the bat, Justice Panganiban in his *ponencia* of *Ang Bagong Bayani v. COMELEC*[12] declared the vision of the Court for the party-list system as "a social justice tool." The argument was based on supposed constitutional and statutory mandates governing the party-list system with the majority ultimately leaning towards the justifications of the petitioners that the party-list system is for the "marginalized and underrepresented sectors" of Philippine society.

Two separate petitions in the COMELEC, and subsequently two petitions for certiorari under Rule 65 of the Rules of Court were filed, questioning the validity of COMELEC Omnibus Resolution No. 3785. Such resolution approved the inclusion of some 154 applicant parties in the party-list elections of 2001, and disallowed the inclusion of others. The petitions were filed by two other party-list candidates, Ang Bagong Bayani-OFW party and the Bayan Muna party. The petition of the former objected to "the inclusion of political parties in the party-list system," while the latter objected to the participation of "major political parties," among them notable political parties such as the Nationalist People's Coalition (NPC), Laban ng Demokratikong Pilipino (LDP), Nationalista Party (NP), and others.

B. *Issues Brought Before the Court*

The two principal issues ruled upon by the Supreme Court were as follows: *first*, whether or not a petition for certiorari under Rule 65 resorted to by the parties is the proper remedy under the law, and related to this, whether or not the COMELEC committed grave abuse of discretion in rendering the

11. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 2-3.

12. *Id.*

questioned Resolutions under the law; and *second*, whether or not political parties may participate in the party-list elections, which included the issue on whether or not the party-list system is exclusive to "marginalized and underrepresented" sectors and organizations.

Anent the first issue, the Supreme Court held that the assailed parties had no other speedy or adequate remedy under the law, thus warranting their resort to a petition for certiorari under Rule 65 of the Rules of Court. In response to the Solicitor General's contention that the petitioners should have filed before the COMELEC a petition either for disqualification or for cancellation of registration, pursuant to Sections 19, 20, 21 and 22 of COMELEC Resolution No. 3307-A, dated November 9, 2000, the High Court held that the petitioners' were attacking the COMELEC Resolutions for having been issued with grave abuse of discretion by allowing the inclusion of the political parties in the party-list election. This was held to be fully acceptable under the Constitution and the Rules of Court.

In fact, Bayan Muna had filed before the COMELEC a Petition for Cancellation of Registration and Nomination against some of herein respondents. The COMELEC, however, did not act on that petition. In view of the pendency of the elections, Bayan Muna sought succor from this Court, for there was no other adequate recourse at the time.

Furthermore, the Omnibus Resolution at issue was promulgated by Respondent Commission *en banc*; no motion for reconsideration was possible, the same being a prohibited pleading under Section 1 (d), Rule 13 of the COMELEC Rules of Procedure.

The Supreme Court also held that the case fell under an exception to the rule that *certiorari* shall lie only in the absence of any other plain, speedy and adequate remedy.[13] Citing jurisprudence where it was held that *certiorari* is available, notwithstanding the presence of other remedies, "where the issue raised is one purely of law, where public interest is involved, and in case of urgency,"[14] the main issue of whether political parties may validly participate in the party-list elections was held to be indubitably imbued with public interest and was of extreme urgency. Proof of such urgency is that it potentially involved the composition of twenty percent (20%) of the House of Representatives. Transcendental constitutional issues on the party-list

13. *Id.* at 12 (*citing* Filoteo v. Sandiganbayan, 263 SCRA 222 (1996); BF Corporation v. CA, 288 SCRA 267 (1998); GSIS v. Olisa, 304 SCRA 421 (1999); National Steel Corporation v. CA, G.R. No. 134437 (January 31, 2000); Sahali v. COMELEC, G.R. No. 134169 (February 2, 2000)).

14. *See* Republic v. Sandiganbayan, 269 SCRA 316 (1997); ABS-CBN Broadcasting Corp. v. COMELEC, G.R. No. 133486 (January 28, 2000); Central Bank v. Cloribel, 44 SCRA 307 (1972).

system were also involved, which the Court, consistent with its duty to "formulate guiding and controlling constitutional principles, precepts, doctrines, or rules," had to resolve with utmost expedience.

In resolving the second and main constitutional issues, the Court held that under the Constitution and RA 7941, private respondents could not be disqualified from the party-list elections, merely on the ground that they are political parties. As support for its decision, Justice Panganiban examined the constitutional foundations of the party-list system.

> First of all, section 5, Article VI of the Constitution provides that members of the House of Representatives may "be elected through a party-list system of registered *national, regional,* and sectoral *parties* or organizations."
>
> Furthermore, under Sections 7 and 8, Article IX (C) of the Constitution, political parties may be registered under the party-list system.
>
> Sec. 7. No votes cast in favor of a *political party*, organization, or coalition shall be valid, except for those *registered under the party-list system* as provided in this Constitution.
>
> Sec. 8. *Political parties*, or organizations or coalitions *registered under the party-list system*, shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law.[15]

It is clear from the above quoted constitutional provisions that there is nothing that can be found which would militate against the inclusion of a political party, or a major political party for that matter, from inclusion as a party-list candidate solely because it is a registered political party. Our fundamental law expressly treats political parties in the same class as other sectoral parties, with both fully capable under the law of being party-list election candidates.

Furthermore, Justice Panganiban cited the debates in the Constitutional Commission regarding the said provisions, which cast an even greater light towards the validity of political parties as party-list candidates. Then Commissioner Christian Monsod, in discussions with Commissioners Blas Ople and Jaime Tadeo confirmed any doubt in the clear construction of the law.

> Comm. Christian S. Monsod pointed out that the participants in the party-list system may "be a regional party, a sectoral party, a national party, UNIDO, Magsasaka, or a regional party in Mindanao. This was also clear from the following exchange between Comms. Jaime Tadeo and Blas Ople:

15. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 14-15.

"MR. TADEO. Naniniwala ba kayo na ang party list ay pwedeng paghati-hatian ng UNIDO, PDP-Laban, PNP, Liberal at Nacionalista?

MR. OPLE. Maaari yan sapagkat bukas ang party list system sa lahat ng mga partido."

Indeed, Commissioner Monsod stated that the purpose of the party-list provision was to open up the system, in order to give a chance to parties that consistently place third or fourth in congressional district elections to win a seat in Congress. He explained: "The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide, have about 1,000,000 or 1,500,000 votes. But they were always third or fourth place in each of the districts. So, they have no voice in the Assembly. But this way, they would have five or six representatives in the Assembly even if they would not win individually in legislative districts. So, that is essentially the mechanics, the purpose and objectives of the party-list system.[16]

Apart from the Constitution, the enabling law tasked to implement the party-list system and its elections, Republic Act 7941, impliedly recognized the inclusion of political parties as possible candidates in sections 2, 3, and 11 of the law which reads:

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.

Sec. 3. *Definition of Terms.* – (a) The party-list system is a mechanism of *proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or* coalitions thereof registered with the Commission on Elections (COMELEC). Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system.

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

Sec. 11. *Number of Party-List Representatives.* – The party-list representatives shall constitute twenty percentum (20%) of the total number of the members of the House of Representatives including those under the party-list.

For purposes of the May 1998 elections, *the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress* of the Philippines shall not be entitled to participate in the party-list system.[17]

16. *Id.* at 15-16.

17. Emphasis supplied.

It is quite clear, in this exhaustive examination, that there is nothing in Philippine law that prevents political parties from being included as candidates in a party-list election solely for the reason that they are registered political parties.

With the question of political parties settled, Justice Panganiban then proceeded to discuss the contention of the petitioners that the party-list system should be reserved for the marginalized and underrepresented sectors of Philippine society, meaning that large, registered political parties who may already have representatives in Congress as regularly elected members should not be allowed to be included as party-list candidates.

While the Court conceded that in the Constitution, there was nothing in the provisions that expressly provides party-list representatives should come only from underrepresented and marginalized sectors or parties representing such sectors,[18] he noted that these constitutional provisions were not self-executory. He observed that the constitutional provisions were "...in fact, interspersed with phrases like "in accordance with law" or "as may be provided by law;" it was thus up to Congress to sculpt in granite the lofty objective of the Constitution. Hence, RA 7941 was enacted. It laid out the statutory policy in this wise.[19] The enabling law tasked to implement these provisions had to be taken into consideration.

Thus, in the Declaration of Policy of RA 7941, it is provided:

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 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.*[20]

Justice Panganiban reasoned that this statutory mandate of proportional representation must be representation as a matter of fact, and not just a claim of being marginalized. This meant that the provision mandates a state policy of promoting proportional representation by means of the Filipino-style

18. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 14-15.

19. *Id.* at 17-18.

20. An Act Providing for the Election of Party-List Representatives through the Party-list system, and Appropriating Funds Therefor, Republic Act No. 7941, § 2 (1995) (emphasis supplied).

party-list system, which will "enable" the election to the House of Representatives of Filipino citizens,

> 1. who belong to marginalized and underrepresented sectors, organizations and parties; and
>
> 2. who lack well-defined constituencies; but
>
> 3. who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.[21]

The term "proportional representation", the Court explained, did not refer to the number of people in a particular district, because the party-list election is national in scope. It refers to the representation of the "marginalized and underrepresented" as exemplified by the enumeration in Section 5 of the law; namely, "labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."

The Court therefore rejected the contention of the Solicitor General that political parties were in no way hampered from being party-list representatives. The Court held that this view contravened the clear intention of the law to provide those truly underprivileged and underrepresented sectors of Philippines society an opportunity to serve in the House of Representatives. The purpose of the party-list system was to open up the system of representation to more sectors of our population, and not simply to perpetuate the influence and political power of the established political parties.

Finally, while the Court reiterated that it was fully within its powers to strike down the official acts of the other branches of government when their actions constituted grave abuse of discretion, it ruled that what was needed in this case was a factual determination of whether all the 154 previously approved groups have the necessary qualifications to participate in the party-list elections, pursuant to the Constitution and the law. This was the proper way to go about determining whether the questioned parties were qualified, giving them an opportunity to be heard in accord with basic tenets of due process.

C. *An Overview of the Decision*

The Court finally held to remand to the COMELEC the question of whether the parties in question were qualified as candidates in the party-list elections, as provided by the intent of the Constitution and the party-list law. It suggested guidelines that the COMELEC may make use of in evaluating each party in question.

21. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 18.

First, the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941.

Second, they must comply with the declared statutory policy of enabling "Filipino citizens belonging to marginalized and underrepresented sectors . . . to be elected to the House of Representatives."

Third, in view of the objections directed against the registration of *Ang Buhay Hayaang Yumabong*, which is allegedly a religious group, the Court notes the express constitutional provision that the religious sector may not be represented in the party-list system.

Fourth, a party or an organization must not be disqualified under Section 6 of RA 7941, which enumerates the grounds for disqualification as follows:

> (1) It is a religious sect or denomination, organization or association organized for religious purposes;
>
> (2) It advocates violence or unlawful means to seek its goal;
>
> (3) It is a foreign party or organization;
>
> (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
>
> (5) It violates or fails to comply with laws, rules or regulations relating to elections;
>
> (6) It declares untruthful statements in its petition;
>
> (7) It has ceased to exist for at least one (1) year; or
>
> (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two *per centum* (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.[22]

This, moreover, should be related to paragraph 5, which disqualifies a party or group for violation of or failure to comply with election laws and regulations.

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

22. R.A. 7941, § 6.

Sixth, the party must not only comply with the requirements of the law; its nominees must likewise do so. Section 9 of RA 7941 reads as follows:

> SEC. 9. *Qualifications of Party-List Nominees.* – No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election, able to read and write, a *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.
>
> In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term.

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

Eighth, as previously discussed, while lacking a well-defined political constituency, the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.

III. Reviewing Policy: An Analysis of RA 7941

> *True, there are jurists and legal writers who affirm that judges should not legislate, but grudgingly concede that in certain cases judges do legislate. They criticize the assumption by the courts of such law-making power as dangerous for it may degenerate into judicial tyranny. . . But said Justices, jurists or legal commentators who either deny the power of the courts to legislate in-between gaps of the law or decry the exercise of such power, have not pointed to examples of the exercise by the courts of such law-making authority in the interpretation and application of the laws in specific cases that gave rise to judicial tyranny or oppression or that such judicial legislation has not protected public interest or individual welfare, particularly the lowly workers or the underprivileged.*[23]

In the case of *Ang Bagong Bayani*, the initial criticism that may very well be lodged against the Court was that of having indulged in judicial legislation. Nevertheless, the fine line separating permissible judicial interpretation and construction is not drawn in black and white; it is, most of the time, mired in gray. In one comment, it had been mentioned before that:

> The common understanding of the judicial function is limited to deciding actual controversies between parties by the mere application of the law. Conventional wisdom regarding jurisprudence does not favor recognition of the policy implications of decided cases; moreover, there is much emphasis on proscribing judicial legislation and the issue of political questions.[24]

23. Floresca v. Philex Mining, 136 SCRA 141, 169-70 (1985).

This role of the Court as a venue for laying down policy should not be viewed as an encroachment into the prerogatives of the legislature and executive, since, their capacity to lay down policy is limited by the fine letter of the law.

The case of *Ang Bagong Bayani* could not be averred as one involving judicial legislation since the guidelines provided by the Court were culled from its interpretation and understanding of existing Constitutional mandates, jurisprudence and of RA 7941. However, the wisdom of the Court's decision is altogether a different story. It is a matter worth analyzing. To this the following queries are posed: *First*, to what extent should constitutional intent have played a role in determining the resolution of the case? *Second*, did the court err in making a proper determination of RA 7941's application? *Lastly*, in a socio-political perspective, had the court really served the interests of the "marginalized and underrepresented sectors?"

It should be noted that the analysis of *Ang Bagong Bayani* shall be limited to the issues with regard to the participation of political parties and the reservation of the party-list system to "marginalized" and "underrepresented" sectors, but not to the other points of the guidelines, particularly those dealing with the prohibition to government sponsored institutions and religious groups. Those points are expressly provided by the Constitution and law and thus are of no issue. It is the policy determination as to the qualification with regard to the participation of political parties that shall be analyzed and discussed.

A. On the Weight of Constitutional Intent

The controversy that was resolved by the Court was the interpretation given to the Constitutional provisions directing the creation of a party-list system in the Philippines and the effect it had in the enactment of the enabling law, RA 7941.

The proponents that constitutional intent should be given effect by the Court was voiced out in the dissent of Justice Vitug, stating that:

> And, the polestar in the constructions of constitutions always remains --- "effect must be given to the intent of the framers of the organic law and of the people adopting it." The law, in its clear formulation cannot give this tribunal the elbow-room for construction. Courts are bound to suppose that any inconveniences involved in the application of constitutional

24. Jose Victor Chan-Gonzaga, *The Province and Duty of the Courts: Law and Policy*, 46 Ateneo L.J. 174, 175 (2001).

> provisions according to their plain terms and import have been considered in advance and accepted as less intolerable than those avoided, or as compensated by countervailing advantages. The *ponencia* itself, in ruling as it does, may unwittingly, be crossing the limits of judicial review and treading the dangerous waters of judicial legislation, and more importantly, of a constitutional amendment. While, the lament of herein petitioners is understandable, the remedy lies not with this Court but with the people themselves through an amendment of their work as and when better counsel prevails.[25]

Basing his counter-argument to the dissents of Justice Vitug and Mendoza on the case of *CLU vs. Exec. Sec.*,[26] Justice Panganiban rebuts by opining that:

> The fundamental principle in constitutional construction, however, is that the primary source from which to ascertain constitutional intent or purpose is the language of the provision itself. The presumption is that the words in which the constitutional provisions are couched express the objective sought to be attained. In other words, *verba legis* still prevails. Only when the meaning of the words used is unclear and equivocal should resort be made to extraneous aids of construction and interpretation, such as the proceedings of the Constitutional Commission or Convention, in order to shed light on and ascertain the true intent or purpose of the provision being construed. [27]

Basically, the discussion boils down to when interpretation is proper and when should construction be availed of. Construction and interpretation are not strictly the same. Interpretation merely goes into "the drawing of conclusions with respect to subjects that are beyond the direct expressions of the text, from the elements known and given in the text."[28] The Court will resort to interpretation when the meaning of words in the statute or Constitution is different from what is apparent, or when the word is considered abstractly when given its usual meaning. Construction however takes place when "the court goes beyond the language of the statute and seeks the assistance of extrinsic aids in order to determine whether a given case falls within the statute. If the legislative intent is not clear after the completion of interpretation, then the court will proceed to subject the statute to construction."[29]

25. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 12-13. (Vitug, J., dissenting).

26. 194 SCRA 317 (1991).

27. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 29.

28. JOSE JESUS LAUREL, STATUTORY CONSTRUCTION — CASES & MATERIALS 3-4 (1999) [hereinafter LAUREL].

29. *Id.*

The majority in the case of *Ang Bagong Bayani* resorted to interpreting the language of the Constitution *verba legis*, specifically, holding that:

> Section 5, Article VI of the Constitution, relative to the party-list system, is couched in clear terms: the mechanics of the system shall be provided by law. Pursuant thereto, Congress enacted RA 7941. In understanding and implementing party-list representation, we should therefore look at the law first. Only when we find its provisions ambiguous should the use of extraneous aids of construction be resorted to.[30]

Finding nothing ambiguous with the provisions of RA 7941, the Court no longer referred to the records of the Constitutional Commission. The supposed guidelines directed by the Court to the COMELEC were derived from the express provisions of RA 7941. In the end, what took place is a flawed interpretation of RA 7941, simply because the party-list enabling law could not be read separately from what the Constitutional Commission had intended when it placed the party-list system in the 1987 Constitution. Justice Vitug's dissent is enlightening because he points out that: "[t]he argument raised by petitioners could not be said to have been overlooked as they precisely were the same points subjected to intense and prolonged deliberations by the members of the Constitutional Commission."[31]

Concluding *Ang Bagong Bayani*, the *ponente* stated that:

> In effect, the Comelec would have us believe that the party-list provisions of the Constitution and RA 7941 are nothing more than a play on dubious words, a mockery of noble intentions, and an empty offering on the altar of people empowerment. Surely, this could not have been the intention of the framers of the Constitution and the makers of RA 7941.[32]

The majority had referred to the intention of the framers of the Constitution as noble but the weight given by the Court to such was contradictory, having overlooked such intentions in its initial examination of RA 7941 and the Constitutional provisions relating to it.

If the Court had considered the Records of the 1986 Constitutional Commission, the Court would have seen that two points of compromise were achieved by the group of Commissioner Villacorta which advocated "reserved" sectoral representation, namely, the reservation of sectoral representatives for the first three consecutive terms of the House of Representatives,[33] and that the mechanics on the party-list system shall be

30. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 30-31.

31. *Id.* at 12. (Vitug, J., dissenting).

32. *Id.* at 42.

33. BERNAS, INTENT, *supra* note 6, 348-49 (1995).

provided by law.[34] The deliberations however did not contemplate a system of "reservation" to a select group or sectors because the intention was to create an open electoral system. Reading through the records, it could be seen that the move to have sectoral representation as against a party-list system was defeated because the framers of the Constitution had a vision for sectoral parties which in the words of Commissioner Ople "can rise to the same majesty as that of the elected representatives in the legislative body, rather than owing to some degree their seats in the legislative body either to an outright constitutional gift or to an appointment by the President of the Philippines."[35] Supporting Ople, Commissioner De los Reyes argued that giving the underprivileged a permanent seat would in the end work to their disadvantage, since, "they would have no incentive to get stronger because they know that they will be enjoying the handicap (meaning permanent sectoral seats) forever."[36] To this end, the Court would have achieved greater clarity in explaining the points of issue in *Ang Bagong Bayani* if it had referred to Constitutional intent vis-à-vis RA 7941 in its application.

B. A Flawed Interpretation of RA 7941's Policy

The social justice declarations of the Court pertaining to the philosophical underpinnings of RA 7941 as to favor the underrepresented and marginalized sectors of Philippine society could not be doubted. However, such declarations had caused the Court to expand the policy under Sec. 2 of RA 7941 from a declaration to a self-executing provision that compels exclusivity in RA 7941's scope and coverage. The Court, in this case, had stuck to what it believed to be the express directive of RA 7941 stating:

> The key words in this policy are "proportional representation," "marginalized and underrepresented," and "lack of well-defined constituencies."
>
> "Proportional representation" here does not refer to the number of people in a particular district, because the party-list election is national in scope. Neither does it allude to numerical strength in a distressed or oppressed group. Rather, it refers to the representation of the "marginalized and underrepresented" as exemplified by the enumeration in Section 5 of the law; namely, "labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."
>
> However, it is not enough for the candidate to claim representation of the marginalized and underrepresented, because representation is easy to claim and to feign. The party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies mentioned in Section 5. Concurrently, the persons nominated by the party-list candidate-organization must be "Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties."
>
> Finally, "lack of well-defined constituenc[y] " refers to the absence of a traditionally identifiable electoral group, like voters of a congressional district or territorial unit of government. Rather, it points again to those with disparate interests identified with the "marginalized or underrepresented."[37]

34. *Id.* at 365.
35. *Id.* at. 357.
36. *Id.* at 355-56.

This point was concluded by the Court stating that, "[I]n the end, the role of the COMELEC is to see to it that only those Filipinos who are "marginalized and underrepresented" become members of Congress under the party-list system, Filipino-style."[38] However, the definition of what actually is marginalized or underrepresented is argumentative at best. Does being marginalized naturally beget being poor? Is underrepresentation an absolute concept based on statistics or figures derived from a present consideration of the composition of Congress?

Commissioner Tadeo believed it to be a mathematical representation determinable through a specific standard to which he had made the following pronouncements:

> MR. TADEO. In deciding which sectors should be represented, the criteria should adhere to the principle of social justice and popular representation. On this basis, the criteria have to include:
>
> 1. The number of people belonging to the sector;
>
> 2. The extent of "marginalization," exploitation and deprivation of social and economic rights suffered by the sector;
>
> 3. The absence of representation in the government, particularly in the legislature, through the years;
>
> 4. The sector's decisive role in production and in bringing about the basic social services needed by the people.[39]

Commissioner Bernas supported Tadeo with this statement:

> The basic premise for this is that by these sectors, we mean the underprivileged masses. That is clearly what is in our mind. The sectors mentioned are understood as the underprivileged. In the 1935 and 1973 Constitutions, and again in our new Constitution, we have enshrined the concept of social justice; and we have understood the concept of social

37. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 20-21.
38. *Id.* at 21.
39. BERNAS, INTENT, *supra* note 6, at 348-49.

> justice not so much as a philosophical concept but as a practical concept, meaning, that those who have less in life should have more in law.[40]

Even with the assertions of Commissioners Tadeo and Bernas, it can be seen that "marginalized and underrepresented" are not definitive concepts. It is completely abstract and relative to the predisposition of the person who invokes the phrase. The Court's use of the "marginalized and underrepresented" qualification is in itself tautological. The initial flow of the argument is that Sec. 2 or the Declaration of Policy of RA 7941 provides that the party list system should enable "marginalized and underrepresented sectors, organizations and parties" to participate in the party-list elections. To find a definitive description of what these "marginalized and underrepresented sectors" are, the Court refers to sec. 5 of RA 7941 stating: "[t]he marginalized and underrepresented sectors to be represented under the party-list system are enumerated in Section 5 of RA 7941. While the enumeration of marginalized and underrepresented sectors is not exclusive, it demonstrates the clear intent of the law that not all sectors can be represented under the party-list system."[41] By this statement, Sec. 5 is referred back to Sec. 2 which supposedly embodies the intent of the law to reserve the party-list system to "marginalized and underrepresented sectors."

In the end, the Court ruled that it is for the COMELEC to determine which parties or groups represent "marginalized and underrepresented sectors" since that is a pure question of fact. The Court, however, in providing these guidelines failed to set a general standard upon which the qualifications of applicant parties or organizations may be gauged. Their only declaration is limited to the vague assertion that they should be representative of a "marginalized or underrepresented" sector. In that aspect, the decision of the Court is inadequate.

C. Interpreting the Words of RA 7941: Issues on Statutory Construction

In the case of *Ang Bagong Bayani*, two points are raised as to the proper application of rules on statutory construction in interpreting the words of RA 7941. *First*, what is the significance of the word "enable" in Sec. 2 of RA 7941? Does it necessarily beget exclusivity in the application of RA 7941? *Second*, was the principle of *ejusdem generis* properly applied to sec. 5 of RA 7941?

Justice Mendoza in his dissent pointed out that:

> Contrary to what the majority claims, §2 does not say that the party-list system is intended "*to enable* Filipino citizens belonging to marginalized and underrepresented sectors, organizations, and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation" to win seats in the House of Representatives. What it says is that the policy of the law is "to promote proportional representation through a party-list system of registered national, regional, and sectoral parties or organizations or coalitions thereof, *which will enable* Filipino citizens belonging to marginalized and underrepresented sectors, organizations, and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation" to win seats in the House. For while the representation of "marginalized and underrepresented" sectors is a basic purpose of the law, it is not its only purpose. As already explained, the aim of proportional representation is to enable those who cannot win in the "winner-take-all" district elections a chance of winning. These groups are not necessarily limited to the sectors mentioned in §5, *i.e.*, labor, peasants, fisherfolk, urban poor, indigenous cultural communities, the elderly, the handicapped, women, the youth, veterans, overseas workers, and professionals. These groups can possibly include other sectors.[42]

Note that what sec. 2 provides is "to *enable* underrepresented sectors, organizations and parties, who lack well-defined political constituencies" to become legislators. Enabling is completely different from reserving. Enabling means that an underrepresented sector is given an ability to participate in a representative election but to what extent that ability shall extend is for other provisions of RA 7941 to provide. Nothing in RA 7941's provisions specifically provide that the party-list system is specifically reserved for "marginalized and underrepresented" sectors. With this assertion, it is but proper that the legal maxim *uti loquitor vulgus*, applies which provides that, "in dealing with matters relating to the general public, statutes are presumed to use words in their popular sense."[43]

Under the rules of statutory construction, the use of "shall" connotes a mandatory directive which is nevertheless qualified by the consideration of the entire provision. In the case of *Gachon vs. De Vera, Jr.*,[44] the Court therein said that:

> The word "shall" ordinarily connotes an imperative and indicates the mandatory character of a statute. This, however, is not an absolute rule in statutory construction. The import of the word ultimately depends upon a consideration of the entire provisions, its nature, object and the consequence that would follow from construing it one way or the other."[45]

40. *Id.* at 354.

41. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 23.

42. *Id.* at 22-23 (Mendoza, J., dissenting) (emphasis supplied).

43. LAUREL, *supra* note 26, at 125.

44. 274 SCRA 540 (1997).

45. *Id.* at 548.

Sec. 2 of RA 7941 reads a "shall" which if understood is a mandate upon the State to promote proportional representation through the party-list system. The mandatory nature is based on an imperative that it is the duty of the State to provide avenues for proportional representation from which the different marginalized sectors may avail of. In its general context, it does not, however, direct a policy of reservation wherein the party list system shall only be for marginalized sectors.

The use of the word "shall" in the proviso of Sec. 5 of RA 7941,[46] if read in the general context of the whole provision also does not direct the COMELEC to limit the sectors to any select group of sectors. The Court had recognized this in as much as stating that the proviso under Sec. 5 is not exclusive.[47] The mandatory intent in the proviso is that the COMELEC shall ensure that the following sectors are ensured as a part of those sectors that can expressly be represented by a particular party-list group.

The Court, in referring to sec. 5 of RA 7941, declared that:

> While the enumeration of marginalized and underrepresented sectors is not exclusive, it demonstrates the clear intent of the law that not all sectors can be represented under the party-list system. It is a fundamental principle of statutory construction that words employed in a statute are interpreted in connection with, and their meaning is ascertained by reference to, the words and the phrases with which they are associated or related. Thus, the meaning of a term in a statute may be limited, qualified or specialized by those in immediate association. [48]

The principle of *ejusdem generis* is used in the construction of laws, wills and other instruments and it provides that "where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned."[49] However, it should be noted

46. Republic Act no. 7941, §. 5. Registration. -- Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: Provided, that the sector shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."

47. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 23.

48. *Id.*

49. BLACK'S LAW DICTIONARY 464 (1979).

that the *ejusdem generis* rule does not apply when the context manifests a contrary intention. In the case of *Roman Catholic Archbishop of Manila vs. Social Security Commission*,[50] it was declared therein that, "[t]he rule of *ejusdem generis* applies only where there is uncertainty. It is not controlling where the plain purpose and intent of the Legislature would thereby be hindered and defeated."[51] A perusal of the whole of Sec. 5 with relation to the definition of terms under Sec. 3 of RA 7941[52] clearly indicates no specific limitation, qualification or specialization in an immediate association to the enumeration of Sec. 5. As what had already been argued, the policy of the law is clearly reflective of the constitutional directive of a "free and open" party system which therefore does not in any way support the argument for exclusivity for marginalized and underrepresented sectors.

50. LAUREL, *supra* note 26, at 114 (*citing* Roman Catholic, 1 SCRA 10 (1961)).

51. *Id* at 114.

52. Republic Act No. 7941, § 3. *Definition of Terms.* – (a.) The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions thereof, registered with the Commission on Elections (COMELEC). Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system.

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

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

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

(d.) A sectoral party refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof whose principal advocacy pertains to the special interests and concerns of their sector.

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

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

D. The Socio-political Considerations Underlying Ang Bagong Bayani

Other than the expansive interpretation that the Court had given to RA 7941's policy, the majority in *Ang Bagong Bayani* failed to realize that, in the end they are not truly serving the capacity of the political party system to develop and mature. By limiting the party list system to a limited and selected criteria, the Court has stunted the ability of the smaller parties to grow. Although these smaller parties have requested that the larger political parties be barred, the Court's policy determination should have been considered more intently within a socio-political setting. It should be noted that:

> A feature of the party-list system is that political parties, sectoral groups and organizations, coalitions and aggrupation acquire the status of "candidates" and their nominees relegated to mere agents. Thus, if a party-list representative dies, becomes physically incapacitated, removed from office by the party or the organization he represents, resigns, or is disqualified during his term, his party can send another person to take his place for the remaining period, provided the replacement is next in succession in the list of nominees submitted to the COMELEC upon registration.[53]

This is tragically what the Court had overlooked. It is the party identity, ideology and platform of government that voters shall consider in an election, and not the personalities nominated by the party or organization. This is the main equalizing factor that smaller parties with limited resources have against large political parties.

Even the Commissioners of the 1986 Constitutional Commission recognized the potential of the party-list system as a tool for encouraging the development of political parties. Commissioner Ople stated that:

> Let us assume that the representatives of these [sectoral] organizations, that is to say, those who enjoy a membership of one million or about one million occupy the seats for two terms, will not six years be enough for them to amalgamate their forces if there is enough basis of unification so that from their platform in the legislature, they can, through a party list system, amass as many seats as are available now outside territorial representation? And beyond that, they can even rise to the level of a major political party able to compete for territorial representation both for the Senate and the House of Representatives.[54]

Commissioner Villegas spoke strongly in support of Ople, stating that:

> I question the statement of Commissioner Aquino that people from the so-called marginalized groups cannot be politically mature, cannot organize themselves and cannot raise funds. In fact, in my experience over the last three years, in dealing with the so-called marginalized groups, I have been so impressed at their tremendous shrewedness and ability to attain political objectives. In contrast, representatives from the middle-income class or from the rich are so naïve and so politically immature compared to them.
>
> Theses marginalized sectors can change in the dynamics of history. Remember, the "poor" are not just poor, economically speaking. The poor, as we have already implied, include the youth; whether or not they are destitute economically, they are still marginalized. Women are also marginalized. And not to mention the unborn, the millions of innocent ones being killed in their mothers' wombs. This kind of poor has nothing to do with economic destitution. Then, as society develops, those who have been speaking about ecological balance in many industrialized countries are voices in the wilderness. So there has to be individuals who can work for these causes. That is why the Green Party as mentioned by Commissioner Rosario Braid became a very important force in Germany.[55]

The party ideology or platform that these parties, organizations or associations carry can overcome and highlight the flaws which large political parties possess. Some may however argue that such a reasoning is not supported by the facts especially with the success of Mamamayan Ayaw sa Droga (MAD) simply because Richard Gomez was one of its nominees and staunchest supporters. But could they not have considered that MAD could have won those votes because people believed in the cause they represented?

The analogy to a student dormitory "open house" used by Justice Panganiban in describing the party list system is inappropriate because it seemingly implies that the law itself provides that district representation is reserved for rich and influential families and that the only way that "normal" citizens or those that are not well-to-do can become a part of Congress is through a special system such as the party-list elections. Surely, the dominance enjoyed by political families in Congress does not owe itself to the provisions of law upon which they are elected but by the socio-political culture pervading in the Philippines. In a paper on political participation in the Philippines, it was mentioned that:

> Rather than being a means through which the people could influence public policy, the vote remained a form of currency through which people in the lower rungs of the pyramid could secure favors from their richer more powerful patrons in the higher rungs who had access to government funds and privileges. At the top of the pyramid was the president, and following Quezon's style of patronage politics, post-war Philippine presidents from Roxas to Marcos "used the state's licensing powers as bargaining chips in their dealings with national and local elites, thereby creating benefices that favored the dominant political families."[56]

53. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 12. (Vitug, J., dissenting).

54. BERNAS, INTENT, *supra* note 6, at 358.

55. *Id.* at 362.

56. Anna Leah Castaneda, *Philippine Elections: The Right to Political Participation in an Elite Democracy*, 41 ATENEO L.J. 314, 342 (1997).

The culture of patronage politics is the main reason why the elite dominate the legislature. It is to this aspect of Philippine politics that the party-list system is specifically directed with the desire to foster the maturation of political party and the people's accompanying development in electoral participation. Moreso, the entitlement of parties, associations or organizations to party-list seats owe not to their being "marginalized" but upon their capability to be truly representative of their sector based on shared ideology or platforms of government.

Perhaps, the Court, in all the criticism that it had received from its decisions relating to the Estrada Presidency, had sought to project that it equally feels for the Filipino masses and that it was naturally "pro-poor." In a case that could escape public notice and be relegated to the study of Election law, the Court was able to send a message that it will intercede in matters political and implore the power of judicial review if only to make a point that the basic tenets of the existence of the law is to serve the needs of those who have less in life. Justice Panganiban, in his *ponencia*, had repeatedly declared that "those who have less in life should have more in law" thus advocating that the party list system should be reserved for those who are underrepresented and marginalized.

IV. Conclusion

> *In "thick democracy," perhaps, lies the hope of Philippine politics. For just as the ilustrados of the Propaganda movement enlightened the masses about the abuses of the Spanish regime and the students successfully lobbied for passage of the law calling for the 1970 Constitutional Convention despite resistance from Congress, NGO and PO-led mass action prepared the way for EDSA, so have NGO's and PO's as well as strong youth vote in post-EDSA electoral exercises forced traditional politicians to re-examine their old-campaign habits. This is consistent with Professor Steiner's observation that "[i]n liberal democracies, most political participation stems from the initiatives of individuals or of institutions that are not formally part of government."*[57]

The main precept of the party-list system is to increase participation amongst our people not only as possible members of government or the legislature in particular but also as an enlightened voter. It is this role that party-list groups must bear — a beacon of enlightenment to the Philippine political party system and the Philippine electorate.

Commissioner Aquino had a pessimistic view towards all his colleagues' vision for the party-list system, mentioning that, "the principle of self-reliance or self-development in the dynamics of political growth as a democratic idea is beautifully simple, but it is wildly unrealistic."[58] Political

57. *Id.* at 382.

58. Bernas, Intent, *supra* note 6, at 360.

parties would have to meet certain conditions, namely: a high level of development of political movements, crystallizing their ideas and being able to project and popularize them; that there must be overriding unity; and a democratic milieu were they can develop.[59] Commissioner Aquino may have been argumentative in his statement but he had hit the very essence of what party-list groups should do. The events after 1986 and most recently in EDSA Dos 2001, highlighted the ability of the non-governmental organizations, people's organizations and sectoral parties or groups to mobilize their ranks, crystallize their cause and thrive in the present. Their strength did not rely on the support of those who were in power or of those in the elite or in the patronage of the Court but rather on the support of each other's conviction.

Grounding its perceptions on real life situations, the Court should have noted that the interest of the people is best served by the development of the Philippine party system under the tempered fires of competitiveness in an open electoral contest absent any special consideration whatsoever. If the Court had looked at the COMELEC list of party-list candidates, it would have noted that for the labor sector alone, more than five groups are competing for the sectors limited number of votes. Thus, with decreased chances of winning seats the impetus for unity within a specific sector would be highlighted.[60]

In his epilogue, Justice Panaganiban concluded that:

> Clearly, therefore, the Court cannot accept the submissions of the Comelec and the other respondents that the party-list system is, without any qualification, open to all. Such position does not only weaken the electoral chances of the marginalized and underrepresented; it also prejudices them. It would gut the substance of the party-list system. Instead of generating hope, it would create a mirage. Instead of enabling the marginalized, it would further weaken them and aggravate their marginalization.[61]

The conclusion of the *ponente* however failed to consider Art. IX-C, Sec. 6 of the 1987 Constitution which provides, "A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article." Thus, it is not the presence of non-marginalized sectors which determines the end result of any election. It is the freedom of choice of the voter under a "free and open party system" which shall determine the electoral chances of the marginalized and underrepresented. It would be based on an individual's determination on the acceptability of a party's beliefs, platforms of government or ideology that would cause it to win or not.

59. *Id.*

60. Available online at <www.comelec.gov.ph>.

61. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613 at 41-42.

The Supreme Court in *Ang Bagong Bayani* should have read the Constitution in its totality to understand the intention of the framers of the 1987 Constitution as to what kind of a political party system it intended to introduce into the country. They wanted something far different from what the Philippines had experienced under Martial Law, thus, it should be "free and open." This determination did not delineate between the traditional party system and the new party-list system. Both invoked the essence of a multi-party system based on a conglomerate of ideas with no effective monopoly of government.

In summary, the Court failed to really understand the real substance of the party-list system. It was not just a social justice tool, it was the hopes and aspirations of Constitutional framers that sought to provide a venue for liberating the masses of Filipinos not from the "marginalization" that the Court emphasized, but from the ignorance and short-sightedness of using the vote as "a commodity or currency in the realm of patronage politics."[62] It is clearly a far more important achievement for a nation to have an enlightened people than an enlightened person representing a mindless majority.

V. POSTSCRIPT

After the Supreme Court laid down guidelines and remanded the case to the COMELEC, the latter had the task of determining which of the parties that had obtained at least two percent of the votes cast under the party-list system were entitled under the law to have a seat in the House of Representatives. Under the Party-List System Act (R.A. 7941), Section 11 provides the rule with respect to which party is entitled to a seat and the number of seats such party may fill up with its nominees:

> 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.

The foregoing provision of law provides that a party, organization or a coalition must obtain at least two percent of the votes cast under the party-list system in order to be given a seat in the House of Representatives. A party, organization or coalition that attains at least four percent (4%) of the total votes cast for the party-list system consequently will be entitled to two seats. The limit for each party, organization or coalition as to the number of seats it may occupy is three, notwithstanding the fact that it may obtain more than six percent of the total votes case for the party-list system.

62. Castaneda, *supra* note 54, at 375.

Applying the aforementioned provision of law as well as the guidelines set by the Supreme Court, the COMELEC, through the Office of the Solicitor General (OSG), initially determined that Bayan Muna had complied with the requirements provided under R.A 7941 and the Supreme Court eight-fold guideline. Submitting its recommendation to the Supreme Court, the latter, on 14 August 2001, lifted the Temporary Restraining Order it had issued which prohibited the COMELEC from proclaiming party-list winners. Bayan Muna obtained 11.36 percent of the total votes cast under the party-list system, and was therefore entitled to three seats in the House of Representatives. Satur Ocampo, Liza Maza and Crispin Beltran were the nominees chosen to sit in Congress.[63]

Immediately after the Supreme Court upheld the recommendation of the OSG which paved the way for the three nominees of Bayan Muna to assume their seats in the House of Representatives, the OSG once again transmitted to the Supreme Court another recommendation, informing the latter that Akbayan and Butil had fulfilled the requirements. Consequently on 25 August 2001 the highest court of the land sustained Akbayan and Butil's victory in the 2001 elections. Akbayan's nominee Loretta Rosales and Butil's nominee Benjamin Cruz were chosen to take their respective party's lone seat in the House because the two groups, respectively, obtained 2.5 percent and 2.2 percent of the 11.4 million total votes cast for the party-list system in the May 2001 elections.[64]

More than six months after the May 2001 elections, the COMELEC, represented by the OSG once again notified the Supreme Court of its findings that two more party-list groups had met the requirements under the law and guidelines set by the Court. Upholding the recommendations of the OSG, the high court, in a five page resolution, ordered the Commission on Elections to immediately proclaim the party-list groups Association of Philippine Electric Cooperatives (Apec) and the Citizens Battle Against Corruption (Cibac) and allow their representatives to sit in Congress.[65] Apec having obtained 5.3 percent of the votes cast for the party-list sytem was entitled to two seats while Cibac having obtained 2.1 percent was entitled to one seat.[66] The resolution by the highest court brought the number of party-list groups occupying seats in the House of Representatives to five.

In its most recent resolution dated 10 April 2002, the Supreme Court once again held as binding and conclusive the findings and recommendations

63. Michael Lim Ubac, *Two More Party-list Groups Make It*, available at <http://www.inq7.net/nat/2002/jan/31/nat_9-1.htm> (last visited May 17, 2002).

64. *Id.*

65. *Id.*

66. *Id.*

of the COMELEC when it rejected the bids of MAD, Lakas-NUCD, Promdi, Nationalist People's Coalition (NPC) and the Veterans Federation Party (VFP) to be declared winners in the May 2001 party-list elections.[67] The high court stated in its seven page resolution that, "indeed, absent patent error or serious inconsistencies, factual findings of the Comelec are conclusive upon this court."[68] In rejecting for the final time the attempt of the five party-list groups, the Supreme Court held that the "movants (MAD, et al.) have not shown cogent reasons why we should set aside COMELEC's compliance report. The arguments that they raised merely refute, without adequate proof, the findings made by the Commission."[69] Moreover, the high tribunal pointed out that the reason for rejecting the bid of the five party-list groups was that the party-list groups did not meet the requirements laid down by the Party-List Law, nor the guidelines it set in the case of *Ang Bagong Bayani*.[70] According to the findings of the COMELEC, Promdi, NPC and Lakas-NUCD did not represent the marginalized sectors while MAD was funded and assisted by the government and VFP is an "adjunct of the government."[71]

Lakas-NUCD and the Nationalist People's Coalition (NPC), two of the biggest political parties in the country, however, have urged the Supreme Court to reconsider its 10 April 2002 resolution on the basis that the latter may have been unaware of the fact that there was a resolution from the COMELEC promulgated the day before the 10 April 2002 resolution, finding them and two other groups qualified for party-list seats in the House of Representatives.[72] The COMELEC resolution allegedly contained a recommendation to the Supreme Court that the nominees of LAKAS-NUCD and NPC be proclaimed as winners.

67. Delon Porcalla, *Party-list groups lose last bid in SC*, available at <http://www.philstar.com/philstar/search_content.asp?article=74270>. (last visited May 16, 2002).

68. *Id.*

69. *Id.*

70. *Ang Bagong Bayani*, G.R. Nos. 147589 & 147613.

71. Porcalla, *supra* note 65.

72. Jess Diaz, *SC urged to reconsider ruling on party-list seats*, available at <http://www.philstar.com/philstar/search_content.asp?article=75752> (last visited May 18, 2002).

Bengson III v. HRET: Resolving the Issues on Citizenship and Jurisdiction

Harvey N. Dychiao, Ryan V. Laureano, Jennifer C. Ong, and Isabel T. Tolosa

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Bengson III v. House of Representatives Electoral Tribunal and Cruz[1] is a case which primarily deals with two issues, namely: repatriation as a mode of acquiring Filipino citizenship, and jurisdiction of the House of Representatives Electoral Tribunal (HRET) over election contests. This note attempts to analyze the discussion of the Supreme Court in these two aspects.

I. CITIZENSHIP

A. Introduction

Noted constitutionalist Joaquin G. Bernas, S.J. defines citizenship as a "personal permanent membership in a political community."[2] In one of his

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1. G.R. No. 142840 (May 7, 2001).

2. JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION REVIEWER — PRIMER 197 (1997) [hereinafter BERNAS, PRIMER].