

Atong Paglaum, Inc. v. Commission on Elections: A Shift in the Party-List System Paradigm

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I. INTRODUCTION

A. The Build Up

Two hundred and thirty three seats for district representatives are being contested in the House of Representatives in the 13 May 2013 mid-term elections.¹ This means that there are 58 Party-List Representative seats up for grabs, by virtue of the mandate of the Philippine Constitution that 20% of the total number of Members of the House of Representatives shall be from

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1. Sheila Crisostomo, *Comelec: All systems go for tomorrow's elections*, PHIL. STAR, May 12, 2013, available at <http://www.philstar.com/headlines/2013/05/12/941160/comelec-all-systems-go-tomorrows-elections> (last accessed July 5, 2013).

the party-list system.² This marks the sixth instance of party-list elections since the first one was held in May of 1998. The competition for seats has become tougher, not just because of the competitors but also because of a Commission on Elections (COMELEC) initiative to better scrutinize the qualifications of participants in response to the ballooning number of groups seeking a seat.

In 2010, 187 parties were accredited for the 2010 elections, stripped down from the 304 organizations that originally sought accreditation.³ The number of accredited parties for 2010 was twice the number of the 93 party-list organizations accredited in 2007.⁴ By all accounts, it seems that the 2013 elections are on par with the 2010 elections in terms of participation. In response to the aftermath of the 2010 elections and the looming 2013 mid-term elections, the COMELEC took steps to address perceived problems in the party-list system.

Ahead of the 2013 party-list elections, the COMELEC promulgated Resolution No. 9366,⁵ a set of rules and regulations governing certain aspects of the elections.

Among the pronouncements in the Resolution are the qualifications of party-list nominees. One of these qualifications is that the nominee be “[a] Filipino citizen who *belongs to the marginalized and underrepresented sector which his sectoral party, organization, political party[,] or coalition seeks to represent.*”⁶ The party-list group and its nominees must also submit evidence to prove that the nominees are truly members of the marginalized and underrepresented sectors that they seek to represent.⁷ It was stated that it was not enough that a nominee was an advocate of the party-list/organization, but that they must be a bona fide member of the marginalized and underrepresented sector.⁸ A

2. PHIL. CONST. art. VI, § 5 (2).

3. Commission on Elections, More than 300 apply for accreditation as partylist, pol parties, *available at* <http://www.comelec.gov.ph/?r=Elections/2010natloc/Modernization/2010NationalLocal/PressReleases/PartyListsApplyAccreditation> (last accessed July 5, 2013).

4. *Id.*

5. Commission on Elections, Rules and Regulations Governing the: (1) Filing of Petitions for Registration; (2) Filing of Manifestation of Intent to Participate; (3) Submission of Names of Nominees; and (4) Filing of Disqualification Cases Against Nominees of Party-List Groups or Organizations Participating Under the Party-List System of Representation in Connection with the May 13, 2013 National and Local Elections, and Subsequent Elections Thereafter, Resolution No. 9366 [COMELEC Res. No. 9366] (Feb. 21, 2012).

6. COMELEC Res. No. 9366, rule 4, § 1 (7) (emphasis supplied).

7. *Id.* rule 4, § 1 (8).

8. *Id.* rule 4, § 1 (8) (d).

petition to deny due course or to cancel the certificate of nomination granted to a party-list nominee may be sought on the ground that a material misrepresentation was made in the qualification of nominees.⁹ Under the Resolution, the material misrepresentation could be that the nominee is not a member of the marginalized or underrepresented sector.

It also stated that the following groups may participate in the party-list elections:

- (a) Sectoral Party — an organized group of citizens whose principal advocacy pertains to the special interests and concerns of the following sectors: Labor; Peasant; Urban Poor; Indigenous Cultural Communities; Elderly; Handicapped; Women; Youth; Overseas Workers; Fisherfolk; Veterans; and Professionals;
- (b) Sectoral Organization — a group of qualified voters bound together by similar physical attributes or characteristics, or by employment, interests, or concerns;
- (c) Political Party — an organized group of qualified voters pursuing the same ideology, political ideas, and principles for the general conduct of the government; and
- (d) Coalition — an aggrupation of duly-registered national, regional, sectoral parties, or organizations for political and/or election purposes.¹⁰

Among the documents to be submitted to support a petition for registration are a “[l]ist of all its officers and members (national, regional, provincial, city/municipal) *particularly showing that the majority of its membership and officers belong to the marginalized and underrepresented sector/s it seeks to represent,*”¹¹ a “*track record summary showing that it represents and seeks to uplift the marginalized and underrepresented sector/s it seeks to represent,*”¹² and “sworn [proof] of existence in the areas where the organization is claiming representation.”¹³ One of the grounds for opposing a petition for registration or to cancel the registration is if the party has made untruthful statements in its petition¹⁴ which, under the Resolution, could be that the party or organization does not truly represent and seek to uplift the marginalized and underrepresented sector that it seeks to represent, among other grounds.

9. *Id.* rule 5, § 1.

10. *Id.* rule 1, § 3.

11. *Id.* rule 1, § 7 (c) (emphasis supplied).

12. COMELEC Res. No. 9366, rule 1, § 7 (f) (emphasis supplied).

13. *Id.* rule 1, § 7 (h).

14. *Id.* rule 2, § 2 (g).

It was the avowed goal of this Resolution to lower the amount of party-lists in the mid-term elections.¹⁵ The stricter qualifications under the Resolution would be the basis for disqualification.¹⁶ Indeed, this seemed like a prudent move with the party-list participation in 2010 more than tripling the ballot length from 8.5 inches to 26 inches.¹⁷ There was a period of time where it appeared that these measures would achieve the desired effect.

On 29 November 2012, the COMELEC announced that it would allow 79 groups to run in the election.¹⁸ However, on election day, 123 parties appeared on the ballot.¹⁹ This was less than a third of the original 289 applicants, with 124 having previously been accredited and an astounding 165 seeking accreditation.²⁰ This would have been the lowest number of party-list participants, at least in the past two elections.²¹

From 1998 to 2010 and now in 2013, much has changed, but in many respects, much has stayed the same. The party-list experience has been nothing short of bewildering. Jurisprudence is littered with its ups and downs, its growing pains, and its evolution. Throughout the decisions of the Supreme Court in *Veterans Federation Party v. Commission on Elections*,²² *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*,²³ *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*,²⁴ and many others, the party-list system has been full of challenges and controversies. It was inserted into the Constitution as an

15. Comelec sees lower number of party-list bets in 2013, *available at* <http://www.sunstar.com.ph/manila/local-news/2012/02/23/comelec-sees-lower-number-party-list-bets-2013-207786> (last accessed July 5, 2013).

16. *Id.*

17. *Id.*

18. Paterno Esmaguél, Comelec approves 79 party-list groups, *available at* <http://www.rappler.com/nation/16978-comelec-approves-79-party-list-groups> (last accessed July 5, 2013).

19. Shiela Crisostomo, *Only 111 of 123 party-list groups on ballot accredited*, PHIL. STAR, May 11, 2013, *available at* <http://www.philstar.com/headlines/2013/05/11/940704/only-111-123-party-list-groups-ballot-accredited> (last accessed July 5, 2013).

20. Paterno Esmaguél, *supra* note 18.

21. *Id.*

22. *Veterans Federation Party v. Commission on Elections*, 342 SCRA 244 (2000).

23. *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 359 SCRA 698 (2001).

24. *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*, 586 SCRA 210 (2009).

experiment, a 25 year-long experiment.²⁵ Fr. Joaquin G. Bernas S.J. has opined that “the COMELEC [being] in a major clean[-]up campaign is proof that we have not yet solved that problem.”²⁶ COMELEC Chairman Sixto S. Brillantes Jr. himself has stated that he wants to have no party-list elections,²⁷ going so far as to suggest that he would rather that it be abolished.²⁸

The policy of the Party-List System Act is to

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 under-represented 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.²⁹

The topic of whether or not the party-list system is reserved for the marginalized and underrepresented has been constantly debated, but it appears that the Court has finally laid this to rest. The recent pronouncement profoundly affected the foregoing COMELEC Resolution, as well as the outlook of the party-list system moving forward.

Chairman Brillantes has said that the decision “effectively deprives the [] marginalized [and underrepresented] the opportunity to have representation in Congress. Under the new parameters, small and marginalized groups will now have to compete with moneyed and well-connected political parties and groups[.]”³⁰ Brillantes has urged Congress to re-examine the party-list law “to make it responsive to the plight of marginalized sectors of society and not the needs of politicians[.]”³¹

25. Joaquin G. Bernas, S.J., *What about the party-list system?*, PHIL. DAILY INQ., Oct. 7, 2012, available at <http://opinion.inquirer.net/38288/what-about-the-party-list-system> (last accessed July 5, 2013).

26. *Id.*

27. Paterno Esmaguél, *supra* note 18.

28. Despite Comelec purge, 2013 party-list race to be dominated by rich and influential, available at <http://ph.news.yahoo.com/despite-comelec-purge-2013-party-list-race-dominated-142815349.html> (last accessed July 5, 2013).

29. An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor [Party-List System Act], Republic Act No. 7941, § 2 (emphasis supplied).

30. Joel E. Zurbano, *Comelec chief bats for party-list review*, MANILA STAND. TODAY, Apr. 11, 2013, available at <http://manilastandardtoday.com/2013/04/11/comelec-chief-bats-for-party-list-review/> (last accessed July 5, 2013).

31. *Id.*

Whether it is within the power of Congress to do so is not clear, since the very basis of the decision would be the intent of the framers of the Constitution.³² Would a party-list law specifically limiting participation to the marginalized and underrepresented through precise language, not just in the policy statement but in its enabling provisions, be unconstitutional?

B. The Party-List System in the 2013 Mid-Term Elections

“[A]pproximately 280 groups and organizations registered and manifested their desire to participate in the 13 May 2013 party-list elections.”³³ Fifty-two party-list groups and organizations which were disqualified by the COMELEC from participating in these elections filed petitions with the Supreme Court to contest “either [the] denial of their [] petitions for registration under the party-list system, or [the] cancellation of their registration and accreditation as party-list organizations.”³⁴

A little over a month before the 13 May 2013 mid-term elections, the Court issued a decision that changed the landscape of the party-list elections. Previously, it was recognized by the Court that the party-list system is reserved for the marginalized and underrepresented sectors.³⁵ This is no longer the case.

In a stunning reversal, Justice Antonio T. Carpio, writing for the majority, stated that “the party-list system is not for sectoral parties only, but also for non-sectoral parties.”³⁶ He further added that —

[Republic Act (R.A.)] No. 7941 does not require national and regional parties or organizations to represent the ‘marginalized and underrepresented’ sectors. To require all national and regional parties under the party-list system to represent the ‘marginalized and underrepresented’ is to deprive and exclude by judicial fiat, ideology-based and cause-oriented parties ... who cannot win in legislative district elections.³⁷

The decision, promulgated on 5 April 2013, hopes to provide an interpretation that will “harmonize the 1987 Constitution and R.A. No. 7941 and will give rise to a multi-party system where those ‘marginalized and

32. See *Atong Paglaum, Inc., v. Commission on Elections*, G.R. No. 203766, Apr. 2, 2013, available at sc.judiciary.gov.ph/jurisprudence/2013/april2013/203766.pdf (last accessed July 5, 2013).

33. *Id.*

34. *Id.*

35. See *Ang Bagong Bayani-OFW Labor Party*, 359 SCRA at 719 and *BANAT*, 586 SCRA at 252.

36. *Atong Paglaum, Inc.*, G.R. No. 203766.

37. *Id.* (emphasis omitted).

underrepresented,' both in economic and ideological status, will have the opportunity to send their own members to the House of Representatives."³⁸

The Court remanded the various petitions to the COMELEC and prescribed "parameters" for the determination of which parties may participate in the 13 May 2013 party-list elections and in future party-list elections.

II. THE CASE PROPER

There were two issues brought before the Court. The first issue was

whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in disqualifying petitioners from participating in the 13 May 2013 party-list elections, either by denial of their new petitions for registration under the party-list system, or by cancellation of their existing registration and accreditation as party-list organizations[.]³⁹

The second issue was "whether the criteria for participating in the party-list system laid down in *Ang Bagong Bayani* and [BANAT] should be applied by the COMELEC in the coming 13 May 2013 party-list elections."⁴⁰

This Comment will only discuss the second issue and where it leads the party-list system.

A. Who May Join the Party-List Elections

Justice Carpio stated that "the party-list system is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the House of Representatives."⁴¹ In support of the position that the party-list system is "not synonymous with that of sectoral representation[.]"⁴² Justice Carpio cites the portions of the discussions of the 1986 Constitutional Commission.⁴³ The conclusion being that this, "[i]ndisputably, [shows that] the framers of the 1987 Constitution intended the party-list system to include not only sectoral parties but also non-sectoral parties."⁴⁴

38. *Id.*

39. *Id.*

40. *Id.* (citing *BANAT*, 586 SCRA at 252).

41. *Atong Paglaum, Inc.*, G.R. No. 203766 (citing 2 RECORD OF CONSTITUTIONAL PROCEEDINGS AND DEBATES 566-67).

42. *Atong Paglaum, Inc.*, G.R. No. 203766 (citing 2 RECORD OF CONSTITUTIONAL PROCEEDINGS AND DEBATES 85-86).

43. *Atong Paglaum, Inc.*, G.R. No. 203766.

44. *Id.*

Justice Carpio buttresses his arguments further by pointing out that “the framers voted down, 19 to 22, a proposal to reserve permanent seats [for] sectoral parties in the House of Representatives, or alternatively, to reserve the party-list system exclusively [for] sectoral parties.”⁴⁵ The reservation of seats for sectoral parties only for the first three consecutive terms⁴⁶ is equated to an express rejection of the “proposal to make the party-list system exclusively for sectoral parties only[.]”⁴⁷

A similarity is drawn between sectoral and non-sectoral parties to show why both are qualified to be part of the party-list elections. The “common denominator between sectoral and non-sectoral parties is that they cannot expect to win in legislative district elections but they can garner, in nationwide elections, at least the same number of votes that winning candidates can garner in legislative district elections.”⁴⁸

The indisputable intent to include sectoral and non-sectoral parties is demonstrated by the citation of Section 5 (1), Article VI of the Constitution, which provides —

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.*⁴⁹

Thus, on the one hand there are sectoral parties and on the other hand there are national and regional parties. The phrase “a party-list system of registered national, regional, and sectoral parties or organizations[.]” is broken down and analyzed, thus —

The commas after the words ‘national’ and ‘regional’ separate national and regional parties from sectoral parties. Had the framers of the 1987 Constitution intended national and regional parties to be the same time sectoral, they would have stated ‘national and regional sectoral parties.’ They did not, precisely because it was never their intention to make the party-list system exclusively sectoral.⁵⁰

45. *Id.*

46. PHIL. CONST. art. VI, § 5 (2).

47. *Atong Paglaum, Inc.*, G.R. No. 203766.

48. *Id.*

49. PHIL. CONST. art. VI, § 5 (2) (emphasis supplied).

50. *Atong Paglaum, Inc.*, G.R. No. 203766.

This leads to the conclusion that “the party-list system is composed of three different groups: (1) national parties or organizations; (2) regional parties or organizations; and (3) sectoral parties or organizations.”⁵¹

But what is the difference anyway?

B. Non-Sectoral Parties v. Sectoral Parties

According to the Party-List System Act, a party can either be a political party, a sectoral party, or a coalition of parties.⁵² A political party is

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 ... 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.⁵³

A sectoral party is “an organized group of citizens belonging to any of the sectors enumerated in Section 5 [of the Party-List System Act] whose principal advocacy pertains to the special interest and concerns of their sector.”⁵⁴

Justice Carpio points to these definitions to show the distinction between a political party and a sectoral party.⁵⁵ He emphasizes that political parties advocate ideologies or platforms, principles, and policies for the general conduct of government while sectoral parties advocate for the special interests and concerns of their respective sectors.⁵⁶

Thus, both are qualified to be part of the party-list system because “R.A. No. 7941 does not require national and regional parties or organizations to represent the ‘marginalized and underrepresented’ sectors.”⁵⁷ It was forcefully articulated that to insist that national and regional parties must represent the marginalized and underrepresented “is to deprive and exclude, by judicial fiat, ideology-based and cause-oriented parties from the party-list system.”⁵⁸ Justice Carpio opines that such an exclusion would leave these

51. *Id.*

52. Party-List System Act, § 3 (b).

53. *Id.* § 3 (c).

54. *Id.* § 3 (d).

55. *Atong Paglaum, Inc.*, G.R. No. 203766.

56. *Id.*

57. *Id.*

58. *Id.*

parties only the option of “armed struggle[.]”⁵⁹ although this may be a bit of a stretch.

It is added that all that is needed so that a political party may participate in the party-list elections is that the party “consists of citizens who advocate the same ideology or platform, or the same governance principles and policies, *regardless of their economic status as citizens.*”⁶⁰ This is an express rejection of economic status as a criterion, not just for being a member of the marginalized or underrepresented sector, but for qualification to the party-list system.

This distinction between non-sectoral and sectoral groups is the means by which Justice Carpio later on demonstrates that a portion of the party-list system is for the “marginalized and underrepresented,” which stands side by side with the portion belonging to small ideology-based and cause-oriented parties.

It is interesting to note that in 1998, the first five major political parties, on the basis of party representation in the House of Representatives, at the start of the 10th Congress of the Philippines, were prohibited from participating in the party-list system.⁶¹ This would seem to support the majority’s assertion that the party-list system is definitely not limited to the sectoral groups, the “marginalized and underrepresented.” After all, had Congress intended to exclude these major political parties altogether it could have easily done so.

C. Not Necessarily Marginalized and Underrepresented

Hammering home the point that the party-list system is not limited to the marginalized and underrepresented sector is the fact that not all of the sectors mentioned in the Party-List System Act are “marginalized or underrepresented.”⁶² It is pointedly asserted that “professionals are not by definition marginalized and underrepresented, and neither are the elderly, women, and the youth ‘necessarily marginalized and underrepresented.’”⁶³ Thus, national and regional parties, as well as sectoral parties of professionals, the elderly, women, and the youth, need not be “marginalized and underrepresented[.]”⁶⁴

59. *Id.*

60. *Id.*

61. Party-List System Act, § 11.

62. *Atong Paglaum, Inc.*, G.R. No. 203766.

63. *Id.*

64. *Id.*

The phrase “marginalized and underrepresented” appears only *once* in R.A. No. 7941, in Section 2 on Declaration of Policy.⁶⁵ The specific provisions implementing R.A. No. 7941 “do not define or require that the sectors, organizations, or parties must be ‘marginalized and underrepresented.’” Justice Carpio states that to do so would lead to absurdities,⁶⁶ although he does not specify what absurdities these would be.

Justice Carpio also makes a statement that the status of “marginalized and underrepresented” refers to “both [the] economic and ideological status.”⁶⁷

An attempt is thereafter made to “harmonize” R.A. 7941’s policy declaration and its specific implementing provisions.⁶⁸ However, it seems that there is apparent discord, as the phrase “marginalized and underrepresented” is found only in the policy declaration and yet the phrase was used prominently in jurisprudence. Throughout the years this phrase has become almost synonymous with the party-list system, even after the expiration of the three consecutive terms following the ratification of the 1987 Constitution.

Justice Carpio’s “harmonization” is as follows —

The phrase ‘*marginalized and underrepresented*’ should refer only to the sectors in Section 5 [of Party-List System Act] that are, by their nature, economically ‘*marginalized and underrepresented*.’ These sectors are: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, overseas workers, and other similar sectors. For these sectors[,] a majority of the members of the sectoral party must belong to the ‘*marginalized and underrepresented*.’ The nominees of the sectoral party either must belong to the sector, or must have a track record of advocacy for the sector represented. Belonging to the ‘*marginalized and underrepresented*’ sector does not mean one must ‘*wallow in poverty, destitution, or infirmity*.’ It is sufficient that one, or his or her sector, is below the middle class. More specifically, the economically ‘*marginalized and underrepresented*’ are those who fall in the low income group as classified by the National Statistical Coordination Board.⁶⁹

According to Justice Carpio,

the recognition that national and regional parties, as well as sectoral parties of professionals, the elderly, women, and the youth, need not be ‘*marginalized and underrepresented*’ will allow *small ideology-based and cause-oriented parties who lack ‘well-defined political constituencies’ a chance to win seats in the House of Representatives*. On the other hand[,] limiting to the ‘*marginalized and underrepresented*’ the *sectoral parties for labor, peasant,*

65. Party-List System Act, § 2.

66. *Atong Paglaum, Inc.*, G.R. No. 203766.

67. *Id.*

68. *Id.*

69. *Id.*

fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, overseas workers, and other sectors that by their nature are economically at the margins of society, will give the ‘marginalized and underrepresented’ an opportunity to win seats in the House of Congress.⁷⁰

Again, those that do not need to be marginalized or underrepresented are (1) national parties; (2) regional parties; and (3) sectoral parties of professionals, the elderly, and the youth (and presumably other sectors that “are not by definition ‘marginalized and underrepresented’”⁷¹ but lack a “well-defined political constituency”).

Perhaps, this would be all well and good, if the only aim is to give the opportunity to win a seat in the House and not to actually hold one.

What Justice Carpio does not mention is that once, rightly or wrongly, the party-list system was reserved entirely for the marginalized and underrepresented, and even then there were parties that were not representative of the marginalized and underrepresented that were able to win seats in the House. It is also conveniently glossed over that this can only mean more competition in an already cluttered field, further diluting opportunities for the marginalized and underrepresented. Does this promote the state policy to “guarantee equal access to opportunities for public service?”⁷² Winning one seat in the House will only be harder now, let alone winning three.

Even after winning one seat in the House, the effectiveness of the nominee in passing legislation that benefits his or her constituency is, at best, questionable. Party-list representatives have proposed hundreds of measures, but these have mostly stalled at the committee level.⁷³ Party-list representatives have not exactly excelled at the “congressional power game where committee secretaries, committee chairs, and committee members can be convinced through reason or horse trading to support their proposed bills.”⁷⁴

It is said that those who have less in life should have more in law.⁷⁵ It was on this “fundamental social justice principle”⁷⁶ that the Court in *Ang Bagong Bayani* anchored its resolution of that case —

70. *Id.* (emphasis supplied).

71. *Id.*

72. PHIL. CONST. art. II, § 26.

73. AGUSTIN MARTIN G. RODRIGUEZ, *THE WINDING ROAD TO REPRESENTATION: THE PHILIPPINE PARTY-LIST EXPERIENCE 21* (2009 ed.).

74. *Id.* at 22.

75. *Del Rosario v. De los Santos*, 22 SCRA 1196, 1199 (1968).

76. *Ang Bagong Bayani-OFW Labor Party*, 359 SCRA at 731.

The party-list system is one such tool intended to benefit those who have less in life. It gives the great masses of our people genuine hope and genuine power. It is a message to the destitute and the prejudiced, and even those in the underground, that change is possible. It is an invitation to come out of their limbo and seize the opportunity.⁷⁷

Have the marginalized and underrepresented been robbed of this tool, this great equalizer? The answer is in the negative. These groups may still participate and run in the party-list elections. What remains to be seen is if they can compete effectively on an even playing field with political parties. One might argue that the field was never even, thus necessitating this great equalizer to shift the balance in the favor of the marginalized and underrepresented.

To illustrate, under the decision in the instant case, a major political party can now participate in party-list elections provided that they do so through a sectoral wing that represents the marginalized and underrepresented.⁷⁸ It would be no stretch of the imagination to suppose that, being adjuncts to major political parties, these sectoral wings would in all likelihood be better organized, manned, and funded. “[T]raditional political parties [] have the machinery and chicanery to dominate [Philippine] political institutions.”⁷⁹ As former Chief Justice Reynato S. Puno noted —

There is no gainsaying the fact that the party-list parties are no match to our traditional political parties in the political arena. This is borne out in the party-list elections held in 2001 where major political parties were initially allowed to campaign and be voted for. The results have confirmed the fear expressed by some commissioners in the Constitutional Commission that major political parties would figure in the disproportionate distribution of votes: of the 162 parties which participated, the seven major political parties made it to the top 50. These seven parties garnered an accumulated 9.54% of the total number of votes counted, yielding an average of 1.36% each, while the remaining 155 parties (including those whose qualifications were contested) obtained only 90.45% or an average of 0.58% each.⁸⁰

A major political party may also join through a sectoral wing that represents those who lack a well-defined political constituency,⁸¹ although it remains to be seen how a major political party that has a clear ideology or platform, principles, and policies for the general conduct of government can

77. *Id.*

78. *Atong Paglaum, Inc.*, G.R. No. 203766.

79. *BANAT*, 586 SCRA at 260 (J. Puno, concurring and dissenting opinion).

80. *Id.* at 259.

81. *Atong Paglaum, Inc.*, G.R. No. 203766.

have a wing that represents an ideology-based, cause-oriented party that lacks a well-defined political constituency. To the Author, this is inconsistent and it is difficult to imagine how this would be executed. Would it not be the objective of such a wing to attempt to bring into the fold of the major political party those who have no party allegiance?

Further, the same logic and arguments against limiting the party-list system to the “marginalized and underrepresented” militate against the similar limitation of the party-list system to national and regional parties that “lack well-defined political constituencies.” In short, the party-list system should not exclude anyone at all.

First, the phrase “lacking a well-defined political constituency” appears only in the Declaration of Policy.⁸² The policy declaration broadly refers to those who lack a well-defined political constituency, but the implementing provisions of R.A. No. 7941 does not define or require that the national or regional parties represent a political constituency that is not well defined.⁸³ Second, none of the eight grounds to refuse or cancel registration refers to non-representation of a political constituency that is not well-defined.⁸⁴ Thus, it seems that even major political parties can participate in the party-list elections, there being no bar in the Party-List System Act for them to join after the 1998 elections. Instead, as will later be discussed, major political parties will only be allowed to participate through independent wings that register as parties under the Party-List System Act.⁸⁵

On another perplexing note, Justice Carpio states that opening up of the party-list system, but only to sectoral parties or organizations and national and regional parties that lack well-defined constituencies,

will give rise to a multi-party system where those marginalized and underrepresented[,] *both in economic and ideological status*, will have the opportunity to send their own members to the House of Representatives. This interpretation will also make the party-list system honest and transparent, eliminating the need for relatively well-off party-list representatives to masquerade as ‘wallowing in poverty, destitution, and infirmity,’ even as they attend sessions in Congress riding SUVs.⁸⁶

It seems as if that what appears in the headlines as “party-lists need not be marginalized” is a misnomer. It seems that what Justice Carpio did was to define what is “marginalized and underrepresented.” It supposedly includes

82. Party-List System Act, § 2.

83. *Id.* § 3 (c).

84. *Id.* § 6.

85. *Id.* § 5.

86. *Atong Paglaum, Inc.*, G.R. No. 203766.

those who have been marginalized and underrepresented ideologically as well as economically.

It is utterly confusing. Does this mean that those “small ideology based and cause-oriented parties who lack ‘well defined political constituencies’” are marginalized and underrepresented? It would seem not, because he states that “‘marginalized and underrepresented’ should refer only to sectors in Section 5 of the Party-List Act that are by their nature, economically ‘marginalized and underrepresented.’”⁸⁷ A constituency lacking a “well-defined political constituency” is a sectoral group. In the parameters that the Court handed down to the COMELEC to determine who could participate in the 13 May 2013 elections, the Court stated, “sectors that lack ‘well-defined political constituencies’ include professionals, the elderly, women, and the youth.”⁸⁸

Justice Carpio also introduced a specific “economic standard” for the marginalized and underrepresented where previously there was none. This standard is whether or not they fall within the “low income group as classified by the National Statistical and Coordination Board.”⁸⁹ While one need not “wallow in poverty, destitution, or infirmity[.]”⁹⁰ one must have some sort of economic disadvantage. Justice Carpio does not elaborate how he came up with this “standard” or the reason behind it. This perhaps was intended to serve as a deterrent for those not so economically prejudiced to be able to participate as a party-list group representing the marginalized and underrepresented. But does this really serve any purpose? They might instead try their hand at entering as “lacking well-defined political constituencies.” The accreditation process might be different, but given the lack of jurisprudence or clarity with respect to “marginalized and underrepresented” (which has been the subject of constant debate since the start of the Party-List System Act),⁹¹ one might expect that the lack of clarity will also apply to the phrase “lack a well-defined political constituency.” Should it now be taken that if one does not qualify as “marginalized and underrepresented,” one may now qualify as “lacking a well-defined political constituency?”

The registration process for the party-list elections is already a disorderly process. It remains to be seen whether this new case law will have a positive or negative effect on this registration process and the party-list system as a whole.

D. Major Political Parties

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. See *Veterans Federation Party*, 342 SCRA at 244-317.

The decision also touched upon the possibility of major political parties in participating in the party-list elections, to wit —

Major political parties cannot participate in the party-list elections since they neither lack ‘well-defined political constituencies’ nor represent the ‘marginalized and underrepresented’ sectors. *Thus, the national or regional parties under the party-list system are necessarily those who do not belong to the major political parties.* This automatically reserves the national and regional parties under the party-list system to those who ‘lack well-defined political constituencies,’ giving them the opportunity to have members in the House of Representatives.⁹²

On the surface, it seems that this is the same as previous decisions. However, reading further along the decision, it will be seen that while major political parties cannot participate directly, they may do so indirectly.

This differs from the 8-7 vote in *BANAT* where “the Court decided to continue the ruling in *Veterans* disallowing major political parties from participating in the party-list elections, directly or indirectly.”⁹³ Indirect participation referred to participation of major political parties through sectoral wings such as Kabataang Liberal ng Pilipinas (KALIPi), the sectoral youth wing of the Liberal Party.⁹⁴ *BANAT* “expressly prohibited major political parties from participating in the party-list system, even through their sectoral wings.”⁹⁵

To reiterate, under this decision, major political parties can participate if they represent marginalized and underrepresented sectors through sectoral wings. This sectoral wing must have “its own constitution, by-laws, platform or program of government, officers[,] and members, a majority of whom must belong to the sector represented.”⁹⁶ The sectoral wing should be an independent sectoral party⁹⁷ that is linked, via a coalition, to a major political party.⁹⁸

Major political parties may not participate themselves, as they do not “lack well-defined political constituencies.” But, as it is never expressly stated in the decision, by implication and applying the same logic, major political parties may participate through independent wings that represent those who “lack well-defined political constituencies”⁹⁹ through a coalition.

92. *Id.*

93. *BANAT*, 586 SCRA at 253.

94. *Id.* at 251.

95. *Atong Paglaum, Inc.*, G.R. No. 203766 (emphasis omitted).

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

It was not elaborated how such a wing would qualify. How would it even be determined if the members of this wing are those who “lack well-defined political constituencies?”

On a final note on this matter, it was never elaborated which parties qualify as “major political parties.” It was simply stated that “major political parties are those that field candidates in the legislative district elections[.]”¹⁰⁰ This simple definition leaves much to be desired. Under the third parameter, the Court issued at the end of the decision that —

Political parties can participate in party-list elections provided they [register] under the party-list system and do not field candidates in legislative district elections. *A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system.*¹⁰¹

It seems the definition of Justice Carpio that describes as a major political party one that fields a candidate in legislative district elections was poorly conceived. How can a political party “*major or not, that fields candidates in legislative district elections [] participate in party-list elections only through its sectoral wing*”¹⁰² when fielding a candidate in a legislative district election makes one a “major” political party? Notably, “the national or regional parties under the party-list system are necessarily those that do not belong to major political parties.”¹⁰³

While this may be confusing, it serves to limit who can participate in the party-list elections. Once one can field a candidate in a legislative district, there is already a “well-defined political constituency” and thus, one no longer qualifies for the party-list system.

Bewilderingly, Justice Carpio’s reliance on “legislative history” puts emphasis on certain statements which tend to support the position that the party-list system should not exclude a major political party, even though it fielded candidates in the district elections —

MR. MONSOD. Madam President, the candidacy for the 198 seats is not limited to political parties. My question is this: Are we going to classify for example Christian Democrats and Social Democrats as political parties? Can they run under the party list concept or must they be under the district legislation side of it only?

MR. VILLACORTA. In reply to that query, I think these parties that the Commissioner mentioned can field candidates for the Senate as well as for the House of Representatives. Likewise, they can also field sectoral

100. *Id.*

101. *Atong Paglaum, Inc.*, G.R. No. 203766 (emphasis supplied).

102. *Id.* (emphasis supplied).

103. *Id.*

candidates for the 20[%] or 30[%], whichever is adopted, of the seats that we are allocating under the party list system.

MR. MONSOD. In other words, the Christian Democrats can field district candidates and can also participate in the party list system?

MR. VILLACORTA. Why not? When they come to the party list system, they will be fielding only sectoral candidates.

MR. MONSOD. May I be clarified on that? Can UNIDO participate in the party list system?

MR. VILLACORTA. Yes, why not? For as long as they field candidates who come from the different marginalized sectors that we shall designate in this Constitution.¹⁰⁴

This is diametrically opposed to the position of Justice Carpio that major political parties fielding candidates in district elections may not participate, except if the political party has an independent sectoral wing. There does not appear to be any strict adherence to the intent of the Framers of the Constitution; instead, Justice Carpio seems to be picking and choosing the parts that he likes.

In the words of Justice Antonin Scalia, “[t]he greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators.”¹⁰⁵

Thankfully, however, we are a nation governed by laws and not the intentions of lawmakers.

The requirement that a candidate be a member of the marginalized sector did not make it into the enabling law. However, whether or not a mere “advocate” is allowed to be a nominee has only now been truly settled.

E. Party-List Nominees

Under R.A. No. 7941, a Party-List Nominee must be a bona fide member of the party or organization he seeks to represent for at least 90 days preceding the day of the elections.¹⁰⁶ Other qualifications under the law are that the nominee be:

- (1) A natural-born citizen of the Philippines;
- (2) A registered voter;
- (3) A resident of the Philippines for a period of not less than one year immediately preceding the day of the elections;

104. *Id.* (emphasis omitted).

105. *Conroy v. Aniskoff, et al.*, 507 U.S. 511, 519 (1993) (J. Scalia, concurring opinion) (U.S.).

106. Party-List System Act, § 9.

- (4) Able to read and write; and
- (5) At least 25 years old on the day of the election.¹⁰⁷

In a welcome departure from previous rulings on nominees, sectoral parties do not necessarily have to be members of the sector to be represented. “*In the case of sectoral parties, to be a bona fide party-list nominee[,] one must either belong to the sector represented, or have a track record of advocacy for such sector.*”¹⁰⁸

Previously, it was required that the nominee belong to the marginalized and underrepresented sector the nominee seeks to represent. “[T]he nominee of the sectoral party/organization/coalition belongs to the marginalized and underrepresented sectors, that is, if the nominee represents the fisherfolk, he or she must be a fisherfolk, or if the nominee represents the senior citizens[,] he must be a senior citizen.”¹⁰⁹

The clear pronouncement in *Atong Paglaum, Inc.* states now that an advocate may be a party-list representative, as long as he or she has a track record of advocacy for the sector he or she seeks to represent.¹¹⁰

The requirement of having a “track record of advocacy” for the sector he or she seeks to represent will hopefully serve as a deterrent to traditional politicians who seek to enter Congress via the party-list route after failing to get elected as a district representative or who ran for an elective position and lost. This is in addition to the restriction that a party-list organization may not include in their list of nominees “any candidate for elective office or person who lost his bid for an elective office in the immediately preceding election.”¹¹¹

However, this does not appear to apply to national or regional political parties.

F. Parameters for the 13 May 2013 Party-List Elections

The Court remanded all the present petitions to the COMELEC¹¹² and issued guidelines to help the COMELEC determine who may participate in the party-list elections from 2013 onwards.¹¹³ These parameters are:

107. *Id.*

108. *Atong Paglaum, Inc.*, G.R. No. 203766 (emphasis supplied).

109. *BANAT*, 586 SCRA at 252.

110. *Atong Paglaum, Inc.*, G.R. No. 203766.

111. Party-List System Act, § 8.

112. *Atong Paglaum, Inc.*, G.R. No. 203766.

113. *Id.*

- (1) Three different groups may participate in the party-list system: (a) national parties or organizations; (b) regional parties or organizations; and (c) sectoral parties or organizations[;]
- (2) National parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any ‘marginalized and underrepresented’ sector[;]
- (3) Political parties can participate in the party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition[;]
- (4) Sectoral parties or organizations may either be ‘marginalized and underrepresented’ or lacking in ‘well-defined political constituencies.’ It is enough that their principal advocacy pertains to the special interest and concerns of their sectors. The sectors that are ‘marginalized and underrepresented’ include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack ‘well-defined political constituencies’ include professionals, the elderly, women, and the youth[;]
- (5) A majority of the members of sectoral parties or organizations that represent the ‘marginalized and underrepresented’ must belong to the ‘marginalized and underrepresented’ sector they represent. Similarly, a majority of the members of sectoral parties or organizations that lack ‘well-defined political constituencies’ must belong to the sector they represent. The nominees of sectoral parties or organizations that represent the ‘marginalized and underrepresented,’ or that represent those who lack ‘well-defined political constituencies,’ either must belong to their respective sectors, or must have a track record of advocacy for their respective sectors. The nominees of national and regional parties or organizations must be bona fide members of such parties or organizations[; and]
- (6) National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified.¹¹⁴

These guidelines were meant to help the COMELEC evaluate if it had mistakenly disqualified any of the petitioners for being a political or regional party not organized along sectoral lines or not representing the “marginalized

114. *Id.*

and underrepresented sectors.” Nominees of the petitioner groups may also have been disqualified because they “do not belong to the sectors they represent ... although they may have a track record of advocacy for their sectors.”¹¹⁵ “[N]ominees of non-sectoral parties may [also] have been disqualified because they do not belong to any sector.”¹¹⁶

The effectivity of the parameters and whether or not such will remain relevant in 2016 is as yet unknown.

III. CONCLUSION

Former Chief Justice Reynato S. Puno declared that

the evils that faced our marginalized and underrepresented people at the time of the framing of the 1987 Constitution still haunt them today. It is through the party-list system that Congress sought to address this systemic dilemma. In ratifying the Constitution, our people recognized how the interests of our poor and powerless sectoral groups can be frustrated by the traditional political parties who have the machinery and chicanery to dominate our political institutions. If we allow major political parties to participate in the party-list system electoral process, we will surely suffocate the voice of the marginalized, frustrate their sovereignty[,] and betray the democratic spirit of the Constitution. That opinion will serve as the graveyard of the party-list system.¹¹⁷

What would Justice Puno have to say in light of this new decision? Indeed if the decision to allow the entry of major political parties was the “graveyard” of the party-list system, surely then Justice Puno would say that it is time to bid the party-list system as we know it goodbye.

Whether this decision is a positive or negative development is certainly not written in stone.

A. Paradigm Shift

Through this decision, the party-list system will undergo a radical paradigm shift. But this begs the question: Why?

Why effect these changes now?

In a 2011 decision, it was stated that —

An equally important aspect of a democratic electoral exercise is the right of free choice of the electorates on who shall govern them; the party-list system, in the words of [*Ang Bagong Bayan*], affords them this choice, as it

115. *Id.*

116. *Id.*

117. *BANAT*, 586 SCRA at 260 (J. Puno, concurring and dissenting opinion).

gives the marginalized and underrepresented sectors the opportunity to participate in governance.¹¹⁸

Why now, indeed, when as late as 29 January 2013, Justice Bienvenido L. Reyes, speaking for a unanimous Court, declared —

It is the role of the COMELEC to ensure that the realization of the intent of the Constitution to give genuine power to those who have less in life by enabling them to become veritable lawmakers themselves, by seeing to it that only those Filipinos who are marginalized and underrepresented become members of Congress under the party-list system.¹¹⁹

What has changed in those months between the release of that decision and the *Atong Paglaum, Inc.* case?

This statement, that

[t]he party-list system of representation was crafted for the marginalized and underrepresented and their alleviation is the ultimate policy of the law. In fact, there is no need to categorically mention that ‘those who are not marginalized and underrepresented are disqualified,’¹²⁰

has been reversed.

It does not seem that the party-list organizations even raised the question of whether or not the party-list system is supposed to be limited to the marginalized and underrepresented only. The majority opinion makes no mention of it. It does not seem that this was the relief they sought.

B. Trial and Error

The Party-List System has been largely a trial and error process, thus —

The original inspiration for the introduction of this novelty into the Constitution was a fairly widespread desire to give the underprivileged sectors of society the capacity to represent themselves in the affairs of the nation. The idea was generally accepted as valid, but the problem was how to put it into a workable formula that could produce the desired result. ... The experiment has been going on for 25 years now. That the Comelec is now engaged in a major clean[-]up campaign is proof that we have not yet solved that problem.¹²¹

Despite the heartening change of allowing advocates to become party-list nominees, this decision will probably bring more questions than answers

118. *Philippine Guardians Brotherhood, Inc. v. Commission on Elections*, 646 SCRA 63, 80 (2011).

119. *Dayao v. Commission on Elections and LPG Marketers*, 689 SCRA 412, 434 (2013).

120. *Id.* at 436.

121. *Bernas, supra* note 25.

to the party-list system. Instead of clarifying things, it is entirely more probable that this decision will create more litigation and bring more problems than solutions. This decision adds more variables to an experiment that is already cluttered with many such factors.

This will only make it more difficult to “fix” the system. Indeed, this “Filipino-style” party-list system may be well over due for a tune up, or better yet, a reboot. It may be the perfect opportunity to call time on the experiment, to analyze the data, and from there formulate an appropriate plan of action.