

Time to Get Real Representatives?: Re-examining Qualifications of Party-List Nominees in Light of COMELEC Resolution No. 9366

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History has borne witness to the struggle of the faceless masses to find their voice, even as they are relegated to the sidelines as genuine functional representation systemically evades them.

— Chief Justice Reynato S. Puno¹

I. INTRODUCTION

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1. *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*, 586 SCRA 210, 254 (2009) (J. Puno, concurring and dissenting opinion).

“[T]he Philippine Electorate still needs to go beyond the faces of power, popularity, and affiliation.”² This was an observation made five years ago, shortly after the 2007 mid-term elections. Five years on with one national election already in the books and the 2013 mid-term elections on the horizon, and the same might still be said of the Philippine electoral scene. Indeed, the same might have been said during *any* previous election as, it seems, things have never really changed.

There are currently 172 applications for registration to participate in the 2013 Party-List Elections.³ There are calls for the Commission on Elections (COMELEC) to “clean up” the list of accredited organizations because “many of these do not really represent the marginalized,”⁴ and according to Ifugao Representative (Rep.) Teddy Brawner Baguilat, “many of these organizations are just an extension of the traditional political elite[.]”⁵ while still others are “mere regional aggregations with ties to the local political lords.”⁶

Rep. Baguilat names Ang Galing Pinoy party-list Rep. Juan Miguel (Mikey) Arroyo as one of the party-list Representatives who are mere “extensions of the political elite.”⁷ There are several other “sectoral representatives” whose constituency is also of questionable stature which have been disqualified.⁸ Babae Ka was disqualified from participating in the 2013 elections after it was tagged as a “front for the Arroyo Administration.”⁹ “[A]n association of tricycle drivers run by [Dr. Arsenio Abalos], brother of former [COMELEC] [C]hairman Benjamin Abalos Sr.[.]” was also among the groups which were disqualified, but this was due

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2. Rita Marie L. Mesina, *Consequences of Disclosure: The Case of Bantay-Republic Act No. 7941 and the Rosales v. Commission on Elections*, 52 ATENEO L.J. 176, 177 (2007).
 3. Charissa M. Luci, *Comelec To Weed Out Party-List 'Pretenders'*, MANILA BULL., May 6, 2012, available at <http://www.mb.com.ph/articles/358937/comelec-to-weed-out-partylist-pretenders> (last accessed May 28, 2012).
 4. *Id.*
 5. *Id.*
 6. *Id.*
 7. *Id.* The Ang Galing Pinoy Party supposedly represents tricycle drivers and security guards. See Mark D. Merueñas, et al., *Mikey back in House, now as party-list representative*, available at <http://www.gmanetwork.com/news/story/196520/news/nation/mikey-back-in-house-now-as-party-list-representative> (last accessed May 28, 2012).
 8. Jocelyn R. Uy, *62 party-list groups barred from 2013 polls*, PHIL. DAILY INQ., May 1, 2012, available at <http://newsinfo.inquirer.net/185347/62-party-list-groups-barred-from-2013-polls> (last accessed May 28, 2012).
 9. *Id.*

to its failure to garner two percent of the party-list vote in the 2010 election.¹⁰ Those organizations that have been delisted and those that are going to be delisted in the course of the “cleaning up” for the upcoming elections will be able to file again to be able to participate in the 2016 elections after serving a one election period suspension.¹¹ The delisting of a number of groups is due to their “failure to gather sufficient votes in the 2010 elections[.]”¹²

This comes on the heels of the 2010 elections, where allies of Rep. Gloria Macapagal-Arroyo tried to get into the House via the backdoor. Marilou Arroyo, a sister-in-law of Rep. Macapagal-Arroyo, claimed to “represent” micro-entrepreneurs like *balut* (fertilized duck embryos) vendors;¹³ a first cousin of Arroyo, Erlinda de Leon, was a nominee for Alliance for Labor and Employment;¹⁴ and 1-Utak, a supposed transport sector representative, nominated another Arroyo ally, former Energy Secretary Angelo Reyes, during the hunt for a 2010 congressional seat.¹⁵ The wife of former General Jovito Palparan, Evangeline Palparan, ran as part of The True Marcos Loyalists.¹⁶ Biyaheng Pinoy is alleged to be one of several sectoral party-list organizations serving as “fronts for the Arroyo administration to create a major voting block in the House of Representatives.”¹⁷

Ahead of the 13 May 2013 national and local elections, the COMELEC promulgated COMELEC Resolution No. 9366¹⁸ on 21 February 2012. This Resolution sets out the Rules and Regulations governing certain aspects of

10. *Id.*

11. *Id.*

12. *Id.*

13. Kristine L. Alave, *185 of 187 party-list groups submit nominees' names to Comelec*, PHIL. DAILY INQ., Mar. 28, 2010, available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100328-261214/185-of-187-party-list-groups-submit-nominees-names-to-Comelec> (last accessed May 28, 2012).

14. *Id.*

15. *Id.*

16. *Id.*

17. Uy, *supra* note 8.

18. 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).

the 2013 party-list elections, namely the filing of petitions for registration,¹⁹ the filing of opposition to petitions for registration,²⁰ the filing of manifestation of intent to participate in the 2013 mid-term elections,²¹ the naming of qualified party-nominees,²² and the filing of petitions to deny or cancel the certificate of nomination of party-list nominees.²³

The COMELEC, even in the absence of petitions for disqualification of party-list nominees, will be removing party-list nominees of “questionable reputation.”²⁴ COMELEC Spokesperson James Jimenez stated that in the past, the removal of those nominees was a problem because of the lack of formal complaints against such nominees.²⁵ However, the COMELEC now has the power to *motu proprio* disqualify any nominee, before proclamation, under certain conditions.²⁶ The previous procedure was outlined in COMELEC Resolution No. 8807.²⁷ The grounds for disqualification were that (1) a nominee did not possess all the qualifications as provided for by the Constitution and existing laws and (2) that the nominee commit any act declared by law to be grounds for disqualification.²⁸ The *motu proprio* power to disqualify was limited to cases under Section 7 of COMELEC Resolution No. 8807.²⁹ The situations under which the COMELEC could *motu proprio* disqualify were when (1) the person was nominated by more than one party, (2) the person nominated did not consent in writing and under oath, (3) the

19. *Id.* rule 1.

20. *Id.* rule 2.

21. *Id.* rule 3.

22. *Id.* rule 4.

23. *Id.* rule 5.

24. Sheila B. Crisostomo, *Comelec to disqualify dubious party-list nominees*, PHIL. STAR, Feb. 26, 2012, available at <http://www.philstar.com/Article.aspx?articleId=781179&publicationSubCategoryId=> (last accessed May 28, 2012).

25. *Id.*

26. COMELEC Res. No. 9366, rule 5, § 6. The Provision states: “The Commission may, at any time before proclamation, *motu proprio* disqualify any nominee whose nomination is contrary to Section 5, Rule 4 of this resolution.” *Id.*

27. Commission on Elections, Rules on Disqualification Cases Against Nominees of Party-List Groups/Organizations Participating in the May 10, 2010 Automated National and Local Elections, Resolution No. 8807 [COMELEC Res. No. 8807] (Mar. 25, 2010).

28. *Id.* § 2.

29. COMELEC Res. No. 8807, § 10. This Section provides: “The Commission may, at any time before election, *motu proprio* disqualify any nominee who violated any of the limitations mentioned in Section 7 of this Resolution.” *Id.* § 10.

person nominated is a candidate for elective office during the same election, (4) the person nominated lost a bid for elective office the previous election, or (5) there is a change or alteration of the order of nominees after the list was submitted to the COMELEC or an invalid substitution.³⁰

The COMELEC has a similar *motu proprio* power to deny due course to petitions for registration of a group seeking to participate in the party-list system.³¹ The *motu proprio* power to remove the registration of any party registered under the party-list system is found in Section 8 of Rule 32 of the

30. *Id.* § 7.

31. COMELEC Res. No. 9366, rule 2, § 2. The Provision states:

Sec. 2. Grounds for opposition to a petition for registration. — The Commission *may deny due course to the petition motu proprio* or upon verified opposition of any interested party, *after due notice and hearing on any of the following grounds:*

- (a) It is a religious sec[t] or denomination, organization or association organized for religious purposes;
- (b) It advocates violence or unlawful means to achieve its goal;
- (c) That it is adjunct or a project or an entity funded or assisted by the government;
- (d) It is a foreign party or organization;
- (e) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or indirectly or through its officers or members or indirectly through third parties for partisan election purposes;
- (f) It violates or fails to comply with laws, rules or[,] regulations relating to elections;
- (g) If it has made untruthful statements in its Petition;
- (h) It has ceased to exist for a period of at least one (1) year;
- (i) 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 preceding elections for the constituency in which has registered; or
- (j) The petition has been filed to put the election process in mockery or disrepute, or to cause confusion among the voters by similarity of names or registered parties, or by other circumstances or acts which clearly demonstrate that the petitioner has no *bona fide* intention to represent the sector for which the petition has been filed and thus prevent a faithful determination of the true will of the electorate.

Id. (emphasis supplied).

COMELEC Rules of Procedure.³² The grounds for *motu proprio* disqualification included:

Section 8. *Cancellation of Registration.* — Upon verified complaint of any interested party, or *motu proprio* by the Commission, the registration of any political party, coalition of political parties[,] or organization under the party-list system may be cancelled after due notice and hearing on the following grounds:

- (a) Acceptance by the political party, coalition of political parties, or organizations or any of its candidates, of financial contributions from foreign governments and/or their agencies for activities related to elections;
- (b) Violation of laws, rules[,] or regulations relating to elections, plebiscites, referenda, or initiative;
- (c) Untruthful statements in its petition for registration;
- (d) The said political party, coalition of political parties[,] or organization has become a religious sect or denomination, is pursuing its goals thru violence or other unlawful means, is refusing to adhere to or uphold the Constitution of the Philippines[,] or is receiving support from any foreign government;
- (e) Failure to comply with applicable laws rules or regulations of the Commission; and
- (f) Failure to field official candidates in the last two proceeding elections or failure of their candidates to obtain at least five *per centum* (5%) of the votes cast in the last two proceeding elections.³³

Notably, these rules were published on 15 February 1993, before the party-list law was enacted.³⁴

While the COMELEC has claimed that this *motu proprio* disqualification “will ‘not trample’ [up]on the party-list groups’ choice of nominees[,]”³⁵ it remains to be seen how the power will be exercised, which parties and nominees will fall by the wayside, and which parties will remain when the dust settles.

Interestingly, it seems that advocacy is no longer enough, as it was “emphasized that a nominee should not only be an advocate of the party-list organization[,] but a *bona fide* member of the ‘marginalized and under-

32. Commission on Elections, COMELEC Rules of Procedure (Feb. 15, 1993).

33. *Id.* rule 32, § 8.

34. The Party-List System Act became effective on March 3, 1995. 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 (1995).

35. Crisostomo, *supra* note 24.

represented sector' that the group seeks to represent in the House of Representatives."³⁶ This requirement appears in Section 1 of Rule 4 of COMELEC Resolution No. 9366.³⁷

36. *Id.*

37. COMELEC Res. No. 9366, rule 4, § 1. The Provision states:

Sec. 1. Qualifications of nominees. — A party list nominee must 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 (1) year immediately preceding election day;
- (4) Able to read and write;
- (5) A *bona fide* member of the party he seeks to represent for at least ninety days preceding election day;
- (6) At least twenty-five (25) year[s] of age;
- (7) *A Filipino citizen who belongs to the marginalized and underrepresented sector which his sectoral party, organization, political party[,] or coalition seeks to represent;* and
- (8) Able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.

In case of the youth sector, he must be at least 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.

The party-list group and the nominees must submit documentary evidence in consonance with the Constitution, R.A. 7941[,] and other laws, to duly prove that the nominees truly belong to the marginalized and underrepresented sector/s, the sectoral party, organization political party[,] or coalition they seek to represent, which may include but not limited to the following:

- (a) Track record of the party-list group/organization showing active participation of the nominee/s in the undertakings of the party-list group/organization for the advancement of the marginalized and underrepresented sector/s, the sectoral party, organization, political party[,] or coalition they seek to represent;
- (b) *Proofs that the nominee/s truly adheres to the advocacies of the party-list group/organizations (prior declarations, speeches, written articles, and other such positive actions on the part of the nominee/s showing his/her adherence to the advocacies of the party-list group/organization);*
- (c) Certification that the nominee/s is/are a *bona fide* member of the party-list group/organization for at least ninety (90) days prior to the election; and

Despite these measures, the disqualification of 62 party-list organizations as of the first week of May,³⁸ and a declaration by the COMELEC that it seeks to limit the total number of participants in the party-list elections to just “120 to 150 groups,”³⁹ the 30 March 2012 deadline for the filing of applications to participate in the 13 May 2013 elections⁴⁰ has still yielded 172 applications.⁴¹ It seems, though, that some organizations were able to file their petitions after the deadline.⁴²

The list of potential participants includes some strange groups, such as the “former military rebels linked to Senator Antonio Trillanes IV and a group of former addicts and alcoholics.”⁴³ The former counts among its constituents retired and former members of the armed forces, as well as urban poor and youth in the National Capital Region (NCR).⁴⁴ The latter group is Addicts and Alcoholics Carrying the Message Association or AACMA, which sees addiction as “marginalized” because “addiction is a disease and not a choice on the part of addicts.”⁴⁵ The proliferation of these

(d) *In case of party-list group/organization seeking representation of the marginalized and underrepresented sector/s, proof that the nominee/s is not only an advocate of the party-list/organization, but is/are also a bona fide member/s of said marginalized and underrepresented sector.*

Id. (emphasis supplied).

38. Uy, *supra* note 8.

39. Sheila B. Crisostomo, *Comelec wants no more than 150 party-list groups in 2013 polls*, PHIL. STAR, May 12, 2012, available at <http://www.philstar.com/Article.aspx?articleId=806146&publicationSubCategoryId=63> (last accessed May 28, 2012).

40. Commission on Elections, *In the Matter of the Last Day for Filing Petitions for Registration of Political Parties, and Petitions for Registration of Parties, Organizations and Coalitions Under the Party-List System of Representation*, Resolution No. 9294 (Oct. 7, 2011).

41. Luci, *supra* note 3.

42. Leslie Ann G. Aquino, *Pro-Life Partylist*, MANILA BULL., May 9, 2012, available at <http://www.mb.com.ph/articles/359189/prolife-partylist> (last accessed May 28, 2012). Pro-Life filed its application on March 31, 2012, this was a day after the deadline. Pro-Life is said to be “backed by the religious group El Shaddai Movement, headed by Bro. Mike Velarde, whose son Rene Velarde is [the] three-term representative” of Buhay Hayaan Yumabong, another pro-life party list group that held three seats during the 14th Congress. *Id.*

43. R.G. Cruz, Magdalo, addicts seek party-list seats, available at <http://www.abs-cbnnews.com/-depth/05/02/12/magdalo-alcoholics-seek-party-list-seats> (last accessed May 28, 2012).

44. *Id.*

45. *Id.*

kinds of groups again raises the question of who is or is not a member of the “marginalized or underrepresented” communities.

Despite the promises of the COMELEC to “thoroughly screen nominees of party-list organizations that will run in the 2013 midterm polls to flush out dubious groups[,]”⁴⁶ the shadow cast by the circus that was the 2010 party-list elections looms large over the coming 2013 elections. “A total of 182 party-list organizations ran in the 2010 polls, making the ballots very long[,]”⁴⁷ as “the ballots then were 26-inches long[.]”⁴⁸

Abuses of the system have led some to call the party-list system “a farce.”⁴⁹ Worse, they have led to calls for the abolition of the party-list system entirely.⁵⁰ These concerns might not be unwarranted, especially since “members of wealthy political clans were allowed to win party-list congressional seats [and] [s]everal party-list groups were also [mere] fronts of major political parties and religious organizations.”⁵¹ It seems apt to ask then: why is there a party-list system anyway, when the more traditional politicians are merely using this supposed great equalizer to circumvent things like term limitations?

However, it is not all bad. Bayan Muna, a prominent party-list organization, has proposed House Bill No. 3413,⁵² which “seeks to limit to only [one] the number of government positions members of a family can hold at the provincial level.”⁵³ The anti-dynasty bill had been languishing in the legislative mill as early as 2001, during the 12th Congress,⁵⁴ and to date

46. Sheila B. Crisostomo, *Comelec to thoroughly screen party-list nominees*, PHIL. STAR, Feb. 24, 2012, available at <http://www.philstar.com/Article.aspx?articleId=780627&publicationSubCategoryId=> (last accessed May 28, 2012).

47. *Id.* There were actually 187 participants in the 2010 elections. See Commission on Elections, National Canvas Report No. 10, May 10, 2010, available at http://www.comelec.gov.ph/results/2010natl_local/national/PARTYLIST.pdf (last accessed May 28, 2012).

48. Sheila B. Crisostomo, *Comelec sets marathon hearings on party-list groups*, PHIL. STAR, May 2, 2012, available at <http://208.184.76.174/Article.aspx?articleId=802770&publicationSubCategoryId=> (last accessed May 28, 2012).

49. *Purge the list*, PHIL. STAR, May 2, 2012, available at <http://www.philstar.com/Article.aspx?articleId=802737> (last accessed May 28, 2012).

50. *Id.*

51. *Id.*

52. See RG Cruz, Anti-dynasty bill now covers nat'l, party-list positions, available at <http://www.abs-cbnnews.com/nation/06/01/11/anti-dynasty-bill-now-covers-natl-party-list-positions> (last accessed May 28, 2012). Currently, House Bill No. 3413 is no longer listed as a pending bill.

53. Cruz, *supra* note 52.

54. *Id.*

no anti-dynasty bill has ever passed the committee level.⁵⁵ Supposedly, the bill also covers party-list representatives,⁵⁶ possibly then addressing the concern of political dynasties masquerading as sectoral representatives in the party-list system.

It appears that the COMELEC is keen on taking steps to ensure that a repeat of the 2010 elections does not occur, where “many voters simply ignored the [party]-list and refrained from picking a party-list group”⁵⁷ because of the sheer amount of organizations participating in the election. With a little less than a year to go to the 2013 elections, bearing in mind the recent Resolutions of the COMELEC and the events of the previous elections, it is an apt time to re-examine the party-list system, with a particular focus on the selection of nominees for the party-list organizations.

II. THE PARTY-LIST SYSTEM IN THE PHILIPPINES

A. *The Beginning*

No less than the Philippine Constitution created the basis for the party-list system.⁵⁸ A cursory reading of the Section, however, reveals that the Constitution left it up to the legislature to supply the details of the party-list system, which it did with Republic Act (R.A.) No. 7941.⁵⁹ “Being a system

55. *Id.*

56. *Id.*

57. *Purge the list, supra* note 49.

58. PHIL. CONST. art. VI, § 5. The Section reads:

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

(2) *The party-list representatives shall constitute twenty per centum of the total number of Representatives including those under the party-list.* For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

PHIL. CONST. art. VI, § 5, ¶¶ (1) & (2) (emphasis supplied).

59. 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 (1995).

based on proportional representation, the party-list system was introduced by the 1987 Constitution to give the ‘marginalized’ sectors or groups access to the House of Representatives[.]”⁶⁰ It was envisioned as a means “to facilitate and ensure the entry and participation of all major interest groups, or at least of as many such groups as possible, in the crucial endeavor of national legislation.”⁶¹ The party-list system was to give various groups the opportunity to “break into the bastion of politicians whose legislation was often shaped by the interests of political, cultural[,] and economic elite.”⁶² Further, it aimed to give the marginalized groups in the Philippines who, under normal circumstances, would have no chance to win an election, an opportunity to enter into Congress and to legislate to address their needs and concerns.⁶³

Then Senator Leticia Ramos-Shahani expressed her opinion on how the party-list system would improve the Philippine democracy, stating in wise: “I think the party-list system was installed in our Constitution in order to expand the democratic basis of our Government. In other words, politics is expensive. In this country, one has to belong to the landed economic or political elite to be elected into Congress.”⁶⁴ The party-list system has the potential to broaden representation and “provide a break from personality oriented politics.”⁶⁵ It is interesting to note that the system, perhaps, advances another provision in the Constitution — Article II, Section 26 — which provides for equal access to public office.⁶⁶

B. Party-List Elections: 1998-2007

Smooth sailing has never been part of the party-list experience. During the first party-list elections in May of 1998, 123 organizations registered, but only 13 mustered the requisite voting threshold to gain a seat in the lower

60. RUDYARD A. AVILA III, *FUNDAMENTALS OF ELECTION LAW* 141 (2010 ed.) (citing Senator Arturo Tolentino during his sponsorship speech for Senate Bill No. 1913, SEN. REC. Vol. II-32, at 119).

61. AVILA, *supra* note 60, at 142 (citing Edward Libunao & Tet N. Abelardo, *Only in the Philippines: the Quirks of the Party-List System*, POLITICAL BRIEF — SPECIAL ISSUE, Sep. 1998, at 17).

62. AGUSTIN G. RODRIGUEZ, *THE WINDING ROAD TO REPRESENTATION: THE PHILIPPINE PARTY LIST EXPERIENCE* 13 (2002 ed.).

63. II RECORD OF THE CONSTITUTIONAL COMMISSION 45 (1986).

64. AVILA, *supra* note 60, at 151.

65. *Id.*

66. PHIL. CONST. art. II, § 26. The Section reads: “Sec. 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.” PHIL. CONST. art. II, § 26.

House.⁶⁷ A little over 9 million votes were cast for party-list candidates, just an atrocious 27% of the total number of registered voters.⁶⁸ However, the “[p]oor participation and poor turnout was expected.”⁶⁹ It was speculated that voters might be adverse having parties or organizations select individuals to represent them in Congress when they could select their own representatives anyway.⁷⁰

There was a much higher percentage of votes cast for the party-list in the second iteration of the election than the first time around,⁷¹ however messy and unstable the election was,⁷² with only 46 out of the 162 party-list organizations qualifying because of failure to meet Supreme Court (SC) guidelines.⁷³ Still, the 2001 party-list election was leaps and bounds an improvement over 1998.

Table 1. Party-List Election Statistics⁷⁴

YEAR	1998	2001	2004	2007
Estimated Philippine Population	76,100,000	81,100,000	87,800,000	91,077,287
Total Registered Voters	34,000,000	36,521,799	43,536,028	43,083,723
Actual Voters	29,200,000	27,700,000	34,000,000	29,984,421

67. AVILA, *supra* note 60, at 145. “Of the 80% total voter turnout, only 26% cast votes for the party-list.” *Id.*

68. Commission on Elections, In the matter of the failure of party-list organizations to comply with Section 6 (8) of Republic Act No. 7941, Resolution No. 6521 (Jan. 6, 2004).

69. AVILA, *supra* note 60, at 145 (citing *Aklat-Asosasyon Para sa Kaunlaran ng Lipunan at Adhikain para sa Tao, Inc. v. Commission on Elections*, 427 SCRA 712 (2004)).

70. *Id.* (citing Record of the Senate on the Party-List System, SEN. REC. Vol. II-34, at 157).

71. *Id.* at 146.

72. *Id.* at 145-46.

73. *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 404 SCRA 719, 746 (2003).

74. Bobby M. Tuazon, PARTY-LIST ELECTIONS: Fraud, Voters Disenfranchisement, a Flawed System, and Other Problems, available at http://www.cenpeg.org/POL%20CURRENTS/PL_RTD_PARTY-LIST%20ELECTIONS_Fraud,%20Voters%20Disenfranchisement.htm#endnotes (last accessed May 28, 2012).

Actual Voters as a Percentage of Total Registered Voters	86.4%	76.3%	78%	69.5%
Total Party-List Votes	9,155,309	15,118,815	12,721,952	15,950,900
Total Party-List Votes as a Percentage of Total Registered Voters	26.9%	41.39%	29.2%	37.02%
Accredited Party-List Groups	122	46	66	92
Qualified Party-List Groups (Met 2% of the Threshold)	13	12	16	16
Qualified Party-List Groups as a Percentage of Accredited Party-List Groups	10.6%	26.08%	24.2%	17.4%

The statistics vary depending upon the sources as to the exact amounts, but for the purposes of the next few paragraphs, the table above should be considered the approximate values.

While there was a marked improvement from the 1998 to the 2001 elections, it seems that over the period covering 2001 to 2007, things did not really change a lot in terms of interest and participation in the party-list system. If anything, there appears to be a downward trend. This has been attributed to the entry of “fake [p]arty-list groups in the 2001 elections[.]”⁷⁵

Aside from the 60% increase between 1998 and 2001, there had not been a significant change in the number of voters who cast their votes in the party-list system.⁷⁶ It has been said that the reason behind this was low voter awareness about the party-list system and the tendency of Filipino voters to elect on the basis of celebrity or popularity.⁷⁷ In the two decades between 1987 and 2007, the COMELEC had done little to inform voters about the party-list system.⁷⁸ There had been neglect in conducting information

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

campaigns about the party-list system and this forced several party-list groups to create information drives as part of their respective electoral campaign, the cost of which eats into their campaign funding.⁷⁹ Print, radio, and television media had also not done much to help raise awareness regarding the party-list system, with the spotlight remaining on the positions of President, Vice-President, Senators, and to a lesser degree Congressmen and the various local officials.⁸⁰

“There have also been several legal battles ... regarding misrepresentation by groups claiming to speak for the poor, continuing attempts by traditional political parties and politicians to use the system as a means of widening their political base[.]”⁸¹ Further, “[i]he law is internally contradictory and quite confusing; even the Supreme Court has not adequately understood it.”⁸²

Suffice to say that the party-list elections have always been mired in controversy.⁸³

III. RECENT PARTICIPATION IN THE PARTY-LIST ELECTIONS

In shocking fashion then did the votes cast in the party-list system almost double to 29,750,041 during the 10 May 2010 elections, the first nationwide automated national and local elections.⁸⁴ There was an estimated maximum of 30,264,579 party-list votes, which were the uncanvassed votes.⁸⁵ This seems scarcely believable since the actual voter turnout for the Presidential elections was around 38 million⁸⁶ out of around 51 million registered voters.⁸⁷ Quite roughly, this equates to around 60% of registered voters turning out for the party-list elections. This is simply astonishing considering the voter turnout for the party-list election has never even reached 50% of

79. *Id.*

80. Tuazon, *supra* note 74.

81. *Id.*

82. *Id.* (emphasis supplied).

83. AVILA, *supra* note 60, at 146.

84. Commission on Elections, In the Matter of Proclamation of Party-List Organizations and Coalitions in Connection with the May 10, 2010 Automated National and Local Elections, NBC Resolution No. 10-009, whereas cl. (May 31, 2010).

85. *Id.*

86. See Cai U. Ordinario, *38-M voter turnout highest since 1978*, BUS. MIRROR, May 13, 2010, available at <http://www.abs-cbnnews.com/nation/05/13/10/38-m-voter-turnout-highest-1978> (last accessed May 28, 2012).

87. *Id.*

registered voters and that the total number of party-list votes had, up to this point, never reached 16 million.⁸⁸

A. *The Circus*

The party-list system is a reaction to the domination of the landed elite of Congress.⁸⁹ While the aim is laudable, some have aimed to exploit the system. A staggering 304 organizations consisting of 256 party-list groups and 48 political parties sought accreditation from the COMELEC for the 2010 elections.⁹⁰

The list of constituencies of those hoping for accreditation at the time bordered on the ludicrous; “cock fighting aficionados, liquefied petroleum gas (LPG) purveyors, security guards, call center agents, [and] albolaryos (rustic doctors)”⁹¹ were just some of the “sectors” seeking representation in Congress. The 187 parties accredited for the 2010 election (after several more had been disqualified for various reasons) more than doubled the 93 party-list organizations that were accredited in 2007.⁹² In 2013, while COMELEC aims to reduce the number of accredited organizations, the number would still far outstrip the 2007 number.

There was some equally shameful, although not illegal, naming of parties in order to appear at the top of the list, by adding the letter A or a few letter As to the beginning of the party name or adding the number one (1) in order to achieve the same effect.⁹³ This is akin to the innovation of a certain actor cum senator in order to appear near the top of the ballot.⁹⁴

88. Tuazon, *supra* note 74.

89. RODRIGUEZ, *supra* note 62, at 13.

90. Commission on Elections, More than 300 apply for accreditation as partylist, pol parties, *available at* http://www.comelec.gov.ph/modernization/2010_nat_local/press_releases/More_than_300_apply_for_accreditation_as_partylist_pol_parties.html (last accessed May 28, 2012).

91. *Id.*

92. *Id.*

93. See Angeli S. Sabillo, COMELEC plans to random print party-list groups in ballot, *available at* <http://thepoc.net/breaking-news/local/15855-comelec-plans-to-random-print-party-list-groups-in-ballot.html> (last accessed May 28, 2012) & Filipina At Home, Thoughts on the party-list system, *available at* <http://www.filipinaathome.com/2010/04/thoughts-on-the-party-list-system/> (last accessed May 28, 2012).

94. See Benj Espina, The senator formerly known as Bong Revilla, *available at* <http://www.thepoc.net/commentaries/6310-the-senator-formerly-known-as-bong-revilla.html> (last accessed May 28, 2012) & Kimberly Jane T. Tan, Revilla Jr.'s surname is now Bong Revilla, *available at* <http://www.gmanetwork>

The 2010 party-list election was a veritable circus and although the 2013 election is still a little less than a year away, it is already shaping up to be just as chaotic.

B. The Problem and the Controversy

1. Who are the Marginalized and the Underrepresented?

Lying at the heart of the controversy is the question of which organizations are qualified to be voted for in party-list elections. Who are the “marginalized and underrepresented?” This has always been controversial. The enabling law in its declaration of policy states the aim of enabling “Filipino citizens belonging to the marginalized and under-represented sectors, organizations[,] and parties[.]”⁹⁵

The provision also allows for the participation of those “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.”⁹⁶

Thus, the State was charged with the development and guarantee of 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.”⁹⁷

.com/news/story/184067/news/nation/revilla-jr-s-surname-is-now-bong-revilla (last accessed May 28, 2012).

95. Party-List System Act, § 2. The full text of the Section is as follows:

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

Id.

96. *Id.*

97. *Id.*

This left the door open for interpretation, “the law [being] quite open in its policy.”⁹⁸ This openness encouraged laxity in the COMELEC accreditation process,⁹⁹ resulting in the non-marginalized being accredited.¹⁰⁰ “Many non-marginalized groups such as dentists, doctors, security agencies, realtors, and publishers associations were accredited as bona fide party-list groups.”¹⁰¹

While in *Ang Bagong Bayani, et al. v. COMELEC*,¹⁰² “[a] divided Supreme [C]ourt made the ruling that the intent of the Constitutional Commission and the implementing Statute, R.A. No. 7941, was not to allow all associations to participate indiscriminately in the system but to limit the participation to parties or organizations representing the ‘marginalized and underprivileged[.]’”¹⁰³ the sheer number of participating party-list organizations makes one wonder how many would have participated if the Court had not set down guidelines.

2. Who should represent them?

Aside from the then exploitable loophole of who could participate in the party-list elections, one might attribute the proliferation of “personality-backed” organizations to the lack of funding.¹⁰⁴ Scuttlebutt has it that the Mamamayan Ayaw sa Droga group (which was also claimed to be government funded) was mainly funded by the top two nominees, Richard Gomez and Jewel Canzon.¹⁰⁵ This was prior to the 2001 party-list elections, and as the years have progressed, it is not hard to imagine rich and influential individuals flexing their significant financial and political clout to gain seats in Congress via the party-list route. Further, “personality-backed” organizations have the advantage of relying on popularity to win a seat.¹⁰⁶ Endorsements from organizations such as Iglesia ni Cristo and Jesus is Lord Church can prove crucial because of their considerable membership.¹⁰⁷ As with the more

98. RODRIGUEZ, *supra* note 62, at 14.

99. *Id.*

100. *Id.* at 15.

101. *Id.*

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

103. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 710 (2009 ed.).

104. RODRIGUEZ, *supra* note 62, at 28.

105. *Id.*

106. *Id.* at 32.

107. *Id.*

traditional elective positions, popularity (as “a major movie and television star” or otherwise) and political machinery are always a plus.¹⁰⁸

In *Ang Bagong Bayani*, the Court concluded: “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.”¹⁰⁹ In line with this, “the Court laid down guidelines for the COMELEC to apply in deciding which organizations qualified. Among the guidelines was the requirement that the parties or organizations must represent the marginalized and underrepresented sector.”¹¹⁰ Even the major political parties must comply with the requirement.¹¹¹

A party-list organization or party “must factually and truly represent the marginalized and underrepresented constituencies mentioned in Section 5.”¹¹² The Court expressed that it is “the clear intent of the law that not all sectors can be represented under the party-list system.”¹¹³ It is not numbers that make a sector marginalized or underrepresented,¹¹⁴ “for the stark reality is that their economic clout engenders political power more awesome than their numerical limitation.”¹¹⁵ “Traditionally, political power does not necessarily emanate from the size of one’s constituency; indeed, it is likely to arise more directly from the number and amount of one’s bank accounts.”¹¹⁶ Thus, the Court ruled that it could not “allow the party-list system to be sullied and prostituted by those who are neither marginalized nor underrepresented.”¹¹⁷

It is said that *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*¹¹⁸ effectively reversed the

108. *Id.*

109. *Ang Bagong Bayani*, 359 SCRA at 708.

110. BERNAS, *supra* note 103, at 711.

111. *Id.*

112. *Ang Bagong Bayani*, 359 SCRA at 719.

113. *Id.* at 720.

114. *Id.* at 722.

115. *Id.*

116. *Id.*

117. *Id.* at 723.

118. *BANAT*, 586 SCRA 210.

ruling in *Ang Bagong Bayani*,¹¹⁹ allowing major political parties to participate in the party-list system.¹²⁰

Neither the Constitution nor R.A. [No.] 7941 prohibits major political parties from participating in the party-list system. *On the contrary, the framers of the Constitution clearly intended the major political parties to participate in party-list elections through their sectoral wings.* In fact, the members of the Constitutional Commission voted down, 19-22, any permanent sectoral seats, and in the alternative the reservation of the party-list system to the sectoral groups.¹²¹

Justice Carpio goes on to state —

In defining a ‘party’ that participates in the party-list elections as either ‘a political party or a sectoral party,’ *R.A. No. 7941 also clearly intended that major political parties will participate in the party-list elections. Excluding the major political parties in the party-list elections is manifestly against the Constitution, the intent of the Constitutional Commission, and R.A. No. 7941.* This Court cannot engage in socio-political engineering and judicially legislate the exclusion of major political parties from the party-list elections in patent violation of the Constitution and the law.

*Read together, R.A. No. 7941 and the deliberations of the Constitutional Commission state that major political parties are allowed to establish, or form coalitions with, sectoral organizations for electoral or political purposes. There should not be a problem if, for example, the Liberal Party participates in the party-list election through Kabataang Liberal ng Pilipinas (KALIP), its sectoral youth wing. The other major political parties can thus organize, or affiliate with, their chosen sector or sectors. To further illustrate, the Nacionalista Party can establish a fisherfolk wing to participate in the party-list election, and this fisherfolk wing can field its fisherfolk nominees. Kabalikang Malayang Pilipino (KAMP) can do the same for the urban poor.*¹²²

While Justice Carpio is to be lauded for his zeal in attempting to rid the land of judicial legislation, it seems he missed out on another piece of legislation from the bench; in 2001 the SC decided to add to the requirements of a nominee for the party-list that the nominee be a member of the sector he seeks to represent.¹²³

C. *The Status Quo*

119. *Id.* at 254 (J. Puno concurring and dissenting opinion).

120. *Id.* at 254-55.

121. *Id.* at 251 (citing II RECORD OF THE CONSTITUTIONAL COMMISSION 584 (Aug. 1, 1986)).

122. *BANAT*, 586 SCRA at 251 (emphasis supplied).

123. *See Ang Bagong Bayani*, 359 SCRA at 719.

The pronouncement of the reversal of *Ang Bagong Bayani*, perhaps, need not have been made, as the party-list system has been criticized for a lack of “real representation in the party-list system, only different political parties forming coalitions.”¹²⁴ The critics point to —

[m]any party-list participants were supported by the state such as [Mamayan Ayaw sa Droga] (MAD), [Veteran’s Freedom Party] (VFB)[.] and [Philippine Coconut Producers] (COCOFED). There are also party-list participants who are big political parties of the ruling classes such as [Lakas-National Union of Christian Democrats] (Lakas-NUCD), [Nationalist People’s Coalition] (NPC), [and] [Pwersa ng Masang Pilipino] (PMP). Some party-list participants represent big businesses such as [Chamber of Real Estate and Builders’ Associations] (CREBA), while others represent big religious sects such as [Citizen’s Battle Against Corruption] (CIBAC) and Buhay Hayaan Yumabong (BUHAY).¹²⁵

The thesis cited above was written a full six years after the declaration in *Ang Bagong Bayani* in 2001. Two elections had passed since 2001 and the number of “spurious” party-list candidates has only proliferated. Fast-forward to 2010, where Mikey Arroyo was proclaimed party-list Representative of security guards.¹²⁶ While a case may be made that security guards are “marginalized and underrepresented,” this is at best arguable.

The issues then continue to be the issues now. It seems that the party-list system has hardly progressed, keeping ever constant the controversies closely associated with it.

IV. QUALIFIED PARTY-LIST NOMINEES

A. R.A. No. 7941

The qualifications of a party-list nominee as prescribed in R.A. No. 7941 are

Section 9. Qualifications of Party-List Nominees. — No person shall be nominated as a party-list representative unless he is a natural born citizen of

124. Joyce M. Briones, *Re-examining the Propriety and Relevance of the Party-list System*, at 14 (2007) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

125. *Id.*

126. See Kristine L. Alave, *Comelec: Mikey Arroyo guards’ rep in House*, PHIL. DAILY INQ., July 21, 2010, available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100721-282268/Comelec-Mikey-Arroyo-guards-rep-in-House> (last accessed May 28, 2012); Tarra V. Quismundo & Jerome C. Aning, *Mikey Arroyo leads 35 party-list solons*, PHIL. DAILY INQ., June 1, 2010, available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100601-273152/Mikey-Arroyo-leads-35-party-list-solons> (last accessed May 28, 2012); & Merueñas, et al., *supra* note 7.

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 elections, able to read and write, [a] bona fide member of the party 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 during his term shall be allowed to continue until the expiration of his term.¹²⁷

As can be gleaned from the provision cited above, a party-list representative has almost the same qualifications as a district representative,¹²⁸ with a few additions, namely, that the prospective nominee be a *bona fide* member of the party-list group or organization he is to represent and that he be a member of such party for at least three months prior to the elections. The law is clear, thus there is no room for interpretation. Instead, it seems that provisions from the Policy Statement were transplanted to the qualifications, which is quite disconcerting.

B. Jurisprudence

The majority, in *Ang Bagong Bayani*, ruled that “not only the candidate party or organization must represent the marginalized and underrepresented sectors; so also must its nominees.”¹²⁹ Interestingly enough, the Court saw fit to add to the requisite qualifications of a party-list nominee set out by R.A. 7941, using Section 2, the policy declaration as basis. It stated —

To repeat, under Section 2 of [R.A. No.] 7941, the nominees must be Filipino Citizens ‘who belong to marginalized and underrepresented sectors, organizations[,] and parties.’ Surely, the interests of the youth cannot be fully represented by a retiree; neither can those of the urban poor or the working class, by an industrialist. To allow otherwise is to betray state policy to give genuine representation to the marginalized and underrepresented.¹³⁰

127. Party-List System Act, § 9.

128. The qualifications of district representatives, as provided by the Constitution, are as follows:

Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less that one year immediately preceding the day of the election.

PHIL. CONST. art. VI, § 6.

129. *Ang Bagong Bayani*, 359 SCRA at 731.

130. *Id.*

If one would read the contested provision closely, it states that the Party-List System Act would “enable Filipino citizens belonging to the marginalized and underrepresented sectors ... to become members of the House of Representatives.”¹³¹ That is, not necessarily that all nominees of party-list organizations *should* be members of the marginalized and underrepresented, but *that if a member of the marginalized or underrepresented should desire, he or she would have the opportunity*, under the law, to become a Member of the House of Representatives.

In his book, noted constitutionalist Joaquin G. Bernas, S.J., expressed concern at this pronouncement of the Court, stating —

The majority also ruled that party-list nominees ‘must represent marginalized and underrepresented sectors.’ This means that nominees who do not have this ideological quality (which incidentally is not easily proved or disproved), they are not qualified to be members of the House of Representatives as party-list representatives. But this is another departure from the constitutional text; this time, however, not by amputation but by grafting. No such ideological requirement is found in Section 6 of Article VI which enumerates the qualifications of a Member of the House of Representatives. According to Section 6, the only difference in qualifications between district representatives and party-list representatives is that a party-list representative does not represent a district and therefore need not have resided in a single district for at least one year immediately preceding the election. In fact neither does R.A. No. 7941 prescribe an ideological qualification[.]¹³²

In *BANAT*, no attempt was made to refine the qualifications of party-list nominees. The Court’s discussion in this case merely reiterated its ruling in *Ang Bagong Bayani* —

Under Section 9 of R.A. No. 7941, it is not necessary that the party-list organization’s nominee ‘wallow in poverty, destitution[,] and infirmity’ as there is no financial status required in the law ... that is, if the nominee represents the fisherfolk, he or she must be a fisherfolk, or if the nominee represents the senior citizens, he or she must be a senior citizen.¹³³

While an attempt was made to strike down the judicial legislation, the Court, in this hotly contested case, failed to strike down all of the policies legislated by the bench. In practice, however, it does not appear to matter, as personalities such as Mikey Arroyo, the presidential son, was able to run and win, as a party-list representative, after leaving his seat as a district representative in the Lower House.¹³⁴

131. Party-List System Act, § 2 (emphasis supplied).

132. BERNAS, *supra* note 103, at 712.

133. *BANAT*, 586 SCRA at 252 (citing *Ang Bagong Bayani*, 359 SCRA at 658).

134. See Alave, *supra* note 126; Quismundo & Aning, *supra* note 126; & Merueñas, et al., *supra* note 7.

This controversy was the subject of *Bello v. COMELEC*,¹³⁵ where three consolidated special civil actions for certiorari, prohibition, and mandamus were filed to disqualify Mikey Arroyo from representing the Ang Galing Pinoy party-list.¹³⁶ The petitioners claim that “not only must the party-list organization factually and truly represent the marginalized and the underrepresented; the nominee must as well be a Filipino citizen belonging to the marginalized and underrepresented sectors, organizations[,] and parties, citing in this regard ... [*Ang Bagong Bayani*].”¹³⁷

[P]etitioners concluded that Arroyo cannot be considered a member of the marginalized and underrepresented sector, particularly, the sector which the AGPP represents — tricycle drivers and security guards — because he is not only a member of the First Family, but is also (a) an incumbent Member of the House of Representatives; (b) the Chairman of the House’s Energy Committee; and (c) a member of key committees in the House, namely: Natural Resources, Aquaculture, Fisheries Resources, Ethics and Privileges, Justice, National Defense and Security, Public Works and Highways, Transportation[,] and Ways and Means.¹³⁸

The COMELEC Second Division dismissed the petitions,¹³⁹ noting correctly that R.A. No. 7941 merely requires that the nominee be “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 elections.”¹⁴⁰ Among its findings were that Arroyo (a) was a member for at least ninety days, considering he became a member of the party on 20 November 2009; (b) actively participated in the party’s undertakings and adhered to its advocacies; and (c) actively supported and advanced the projects and programs of the party by attending its meetings, livelihood and skills program, and farmer’s day activities.¹⁴¹ The COMELEC *en banc* refused to reconsider the Second Division ruling, reaffirming it instead.¹⁴² It even declared Section 6 of COMELEC Resolution No. 8807, which it had promulgated barely two weeks prior, as *ultra vires* for adding a requirement not found in R.A. No. 7941 on 7 May 2010, just three days before the scheduled elections.¹⁴³ Thus, by the time the petition reached the SC on 23 July 2010,¹⁴⁴ Arroyo had

135. *Bello v. Commission on Elections*, 637 SCRA 59 (2010).

136. *Id.* at 60.

137. *Id.* at 63.

138. *Id.*

139. *Id.* at 64.

140. *Id.* at 64-65.

141. *Bello*, 637 SCRA at 65.

142. *Id.*

143. *Id.*

144. *Id.* at 66.

already been proclaimed by 21 July 2010.¹⁴⁵ Petitioners strongly relied, as their legal basis, the SC decisions in *Ang Bagong Bayani* and *BANAT*, which incidentally were the cases which added the requisite now in controversy.¹⁴⁶

The SC, quite disappointingly, sidestepped the issue by declaring that since Mikey Arroyo had been proclaimed and assumed office as a Member of the House of Representatives, it no longer had jurisdiction over the case.¹⁴⁷ It held that it was for the House of Representatives Electoral Tribunal (HRET) to interpret the meaning of the phrase “bona fide member of the party or organization which he seeks to represent.”¹⁴⁸ The case was dismissed without a clear indication of whether or not the Court would have overturned the decisions in *Ang Bagong Bayani* and *BANAT* had it had jurisdiction. Thus, the status of this particular qualification of party-list nominees remains up in the air.

V. COMELEC RESOLUTION NO. 9366

A. The Additional Qualification of a Party-List Nominee

COMELEC Resolution No. 9366 outlines a few qualifications for party-list nominees,¹⁴⁹ the most significant of which is that the nominee “*belongs to the marginalized and underrepresented sector which his sectoral party, organization, political party[,] or coalition seeks to represent[.]*”¹⁵⁰ In fact, this is substantially the same as the requisites laid out in COMELEC Resolution No. 8807, which the COMELEC *en banc* in 2010 declared *ultra vires*.¹⁵¹

In fact, it is not just substantially the same, it is a virtual reprint of the same resolution it declared invalid. So what has changed? Only three commissioners have stepped in since the 2010 election: Chairman Sixto Brillantes replaced Chairman Jose Melo, while Commissioners Christian Lim and Augusto Lagman replaced Commissioners Nicodemo Ferrer and Gregorio Larrazabal.¹⁵² Commissioner Nicodemo Ferrer penned the

145. *Id.*

146. *Id.* at 68.

147. *Bello*, 637 SCRA at 77.

148. *Id.*

149. COMELEC Res. No. 9366, rule 4, § 1.

150. *Id.* ¶ 7 (emphasis supplied).

151. COMELEC Res. No. 8807, § 6, ¶ 7. The provision states: “One who belongs to the marginalized and underrepresented sector/s, the sectoral party, organization, political party[,] or coalition he seeks to represent[.]” *Id.*

152. See Sheila Crisostomo, *YEARENDER: New Comelec eyes reform, redemption*, PHIL. STAR, Dec. 29, 2011, available at <http://new.philstar.com/headlines/762972/yearender-new-comelec-eyes-reform-redemption> (last accessed May 28, 2012).

Consolidated Resolution denying the Motion for Reconsideration of the Second Division for the disqualification of Mikey Arroyo.¹⁵³ Commissioners Yusoph, Tagle, and Velasco concurred in his opinion, while Commissioners Sarmiento and Larrazabal dissented, and Chairman Melo abstained.¹⁵⁴

Given that the vote then was four votes to two,¹⁵⁵ it is conceivable that the change in, or rather reversion to, the policy in COMELEC Resolution No. 9366 was due to the entrance of the three new commissioners. Assuming the three who originally concurred with Commissioner Ferrer did not change their vote to declare the requirement *ultra vires*, the only conclusion can be that the three new commissioners are in favor of the additional requirement and agree with the two original dissenters.

B. Motu Proprio Power to Disqualify

The COMELEC's claim that it would disqualify party-list nominees of "questionable reputation" without need of action by any other party is misguided and illusory, at best. The *motu proprio* power referred to in Section 6 of Rule 5 is clearly limited to the disqualification of "nominee[s] whose nomination is contrary to Section 5, Rule 4 of ... [COMELEC] Resolution [No. 9366]."¹⁵⁶ Section 5 of Rule 4 is as follows —

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list.¹⁵⁷

Clearly then, a person nominated may only be disqualified *motu proprio* by the COMELEC when (a) he appears on more than one list, (b) he did not consent in writing to be named in the list, (c) he is a candidate for elective office in the same election, (d) he lost his bid for an elective office in the immediately preceding election, or (e) his name was added to the list of nominees or changed or altered after submission to the COMELEC.¹⁵⁸

153. *Bello*, 637 SCRA at 65 n.26.

154. *Id.*

155. *Id.*

156. COMELEC Res. No. 9366, rule 5, § 6.

157. *Id.* rule 4, § 5.

158. *Id.*

Thus, a petition to deny due course to or to cancel a certificate of nomination is required to remove a nominee. A petition to deny due course to a nomination may be filed by any person only on the ground of material misrepresentation in the qualifications of a nominee.¹⁵⁹ Thus, the requirement of being “not only an advocate of the party-list/organization but is/are also a bona fide member/s of the said marginalized and underrepresented sector”¹⁶⁰ being listed under the qualifications of a nominee, such nominee may only be removed via a petition to deny due course and/or cancel the nomination¹⁶¹ unless, of course, the phrase “any person” be interpreted in a strained manner as to include the COMELEC itself.

Does the COMELEC itself not understand the law on the party-list system as enacted by Congress?

VII. CONCLUSION

A. Summary

Despite the news reports and the furor surrounding the promulgation of COMELEC Resolution No. 9366, it appears that the status of the requirements of party-list representatives has not changed since the SC promulgated *Ang Bagong Bayani*. It reiterated itself in several decisions since, most notably in *BANAT*.

The COMELEC meanwhile has flip-flopped, backtracking on its previous declaration that a party-list nominee need not be a member of the sector which he seeks to represent. It appears then, that there really was no change in the rulings of the SC. The fact of the matter is that the rules laid out in COMELEC Resolution No. 9366 are the same as the rules that had been laid out in previous years by the SC decisions. Nothing has changed, except for that brief period in 2010 where the COMELEC relied upon the wording of R.A. No. 7941, instead of the SC rulings.

There has been a clear lack of consistency in enforcing the rules as they stand and, perhaps, rightly so since the rules have gone beyond the law in prescribing limitations not found in the enabling law. Perhaps this issue should have been laid to rest in 2010 in *Bello*. The only reason for sidestepping the issue then was that the HRET had jurisdiction over the matter and not the SC. The SC, perhaps, did not want to preempt the decision of the HRET out of *delicadeza* (although others might attribute the decision to much darker reasoning that should be relegated to pure

159. *Id.* rule 5, § 1.

160. *Id.* rule 4, § 1, ¶ 8 (d).

161. *Id.* rule 5, § 1.

speculation).¹⁶² However, the Author wonders whether the chaos surrounding the party-list system might have been alleviated or these issues put to rest had the Court resolved the issue or at the very least commented on it, as it had done so many times before.

B. The Outlook for 2013

Specific sections of COMELEC Resolution No. 9366, until the Congress sees fit to amend R.A. No. 7941, should be, like its predecessor COMELEC Resolution No. 8807, declared *ultra vires* for being an undue expansion of the Party-List System Act. It remains to be seen whether some interested party will step forward and request that this be done, given that the expansion of the law has been in place for over a decade without being questioned and because it does not appear that the rule laid out was ever truly implemented.

With less than a year to go to the 2013 mid-term elections, one can foresee the brewing legal battles in the year ahead. Undoubtedly, some of the party-list groups or organizations that will be delisted from now until the 2013 elections will contest their disqualifications. Definitely, party-list nominees disqualified because they are “mere advocates” will contest their disqualification on the basis that, in the words of Fr. Bernas, “this is another departure from the constitutional text; this time, however, not by amputation but by grafting.”¹⁶³ In his opinion, Fr. Bernas believed that Mikey Arroyo and even Angelo Reyes were qualified to be party-list representatives in 2010.¹⁶⁴

Should advocates be allowed to be party-list representatives?

The Author humbly submits that they should. While there are dangers,¹⁶⁵ it is submitted that these dangers exist regardless and that the benefits are more realizable.

162. The decision in *Bello* was penned in 2010, after the proclamation of Justice Renato C. Corona as Chief Justice. Given the recently concluded impeachment trial against him for, among others, being an “ally” of the mother of Mikey Arroyo, if one were to speculate, one might conclude that no decision was made in order to favor the presidential son. Such speculation, however, should not be given consideration, as the Court *en banc* was unanimous in its decision, with only Justice Velasco not voting as he was on leave.

163. BERNAS, *supra* note 103, at 712.

164. Joaquin G. Bernas, S.J., *Who can be a party-list rep?*, PHIL. DAILY INQ., Mar. 15, 2010, available at <http://opinion.inquirer.net/inquireropinion/columns/view/20100315-258738/Who-can-be-a-party-list-rep> (last accessed May 28, 2012).

165. The party-list system might be used as a backdoor entry point for undeserving candidates and the 55 strong force of party-list representatives is a force to be reckoned with if rallied properly. *Id.*

Party-list representatives have proposed hundreds of measures, but these have mostly stalled at the committee level.¹⁶⁶ Author Agustin Rodriguez describes the situation —

In Congress, before a bill can be voted upon by the chamber in order that it pass on its way to law, the bill has to be deliberated in an appropriate House committee. These committees will sponsor hearings and deliberations where the members of the House as well as resource persons from the citizenry can present their positions regarding the soundness of the proposed measures. Before the bills make it to the floor for voting, they have to be passed as committee reports. However, hardly any of these bills [authored by party-list representatives] have passed through the committee as committee reports.¹⁶⁷

This speaks to the inability of the party-list representatives “to play 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.”¹⁶⁸ Given the background of party-list representatives, who are not mere advocates, as “neophytes with little economic or political power[.]”¹⁶⁹ it is no wonder then that most party-list representatives struggle to enact legislation that will benefit their constituencies.

Therein lies the advantage of advocates. Advocates may have political or economic weight to swing around to get what they want; the danger being that they might swing this considerable weight in order to favor themselves.

While there is merit in having members of the marginalized and underrepresented be in Congress — after all who knows the plight and needs of the marginalized and underrepresented more than one who has been there and continues to be there — the influence and skill that advocates bring to the table speak considerably in their favor. Further, it helps that the law and the Constitution have not excluded them, as the SC has excluded them.

Until Congress sees fit to change the qualifications for party-list nominees, advocates, although it is preferred that they be true advocates and not sham ones, should not be denied the opportunity to advocate their causes.

Perhaps the time is now ripe to reevaluate and, if needed, amend the party-list system and the many challenges that have come with it in its two-decade long existence.

¹⁶⁶ RODRIGUEZ, *supra* note 62, at 21.

¹⁶⁷ *Id.* 21-22.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

“[T]he party-list system was envisioned as an experiment. ... [N]ow is the time to evaluate the experiment.”¹⁷⁰

170. Joaquin G. Bernas, S.J., *The evolution of the party-list system*, PHIL. DAILY INQ., Feb. 14, 2010, available at <http://opinion.inquirer.net/inquireropinion/columns/view/20100214-253232/The-evolution-of-the-party-list-system> (last accessed May 28, 2012).